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June 3, 2003

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Alberta Securities Commission
Saskatchewan Financial Services 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, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

Re: Request for Comments on Proposed MI 55-103 (Insider Reporting)

In response to the Canadian Securities Administrators (the "CSA") request for comments on proposed Multilateral Instrument 55-103 – Insider Reporting for Certain Derivative Transactions (Equity Monetization) published on February 28, 2003 (referred to herein as the "Instrument"), please find below comments of Blake, Cassels & Graydon LLP.

Compensation Arrangements

The Multilateral Instrument, as drafted, would appear to require reporting for a very large number of compensation arrangements for which there are currently no insider reporting requirements. This represents a very significant change in approach and policy. For example, stock appreciation rights, restricted share units and deferred share units (a type of restricted share unit) would all appear to be caught by the insider reporting requirements imposed by the

proposed Instrument. Such arrangements which provide for the possibility of a payout in shares or other securities, whether acquired in the market or issued from treasury, are arguably caught by the current insider reporting rules and certainly, to our knowledge, this is the view taken by most issuers. However, where these arrangements provide only for a cash payment by the issuer, the commonly accepted view is that they are not subject to current insider reporting requirements as they are not securities. The proposed Instrument would appear to capture these and accordingly impose a new insider reporting requirement on a very significant number of compensation arrangements that are not currently reported under insider reporting rules. For instance, many issuers have in place a deferred share unit plan, at least for their directors.

We acknowledge that the Instrument attempts to provide exemptions for these, but as discussed below the exemptions will be of limited application and if applied would very likely result in inconsistent and anomalous results. This view differs from that expressed in the Companion Policy to the effect that the CSA do not expect there to be "any change to the existing approach to reporting (or not reporting) such compensation arrangements".

We note that the exception in section 2.2(b)(i)(A) will be of limited benefit as annual audited financial statements do not typically contain disclosure of individual compensation arrangements. Similarly, the exception in section 2.2(b)(i)(C) will rarely be of any assistance, as issuers are not usually required to publicly file disclosure concerning cash-only payment plans with the exchanges.

We note the exemption provided in section 2.2(b)(ii) requiring "the satisfaction of a pre-established condition or criterion" rarely applies in the case of the grant of most stock appreciation rights, restricted stock unit or deferred stock unit plans. Hence, this exception would not apply to many such arrangements.

The exception referred to in section 2.2(b)(i)(B) may also not be helpful, as it is only arrangements made with the (usually) five named executive officers which are disclosed under current compensation disclosure requirements. Indeed, in many cases, stock appreciation rights are used for executives below the most senior executive officer level in lieu of stock options. As a result, a number of non-named executive officers will be required to report compensation arrangements such as stock appreciation rights granted to them within 10 days, while named executive officers, the most senior members of management, will have no requirement to report such arrangements which will typically only be disclosed up to one year later in a proxy circular. The exception will accordingly not apply to many compensation arrangements. Moreover, these significant differences in treatment for different insiders for the same arrangements would appear to be anomalous.

Similarly, while the current requirements require a narrative description of the executive compensation arrangements for directors, which would typically apply to deferred share unit plans, such disclosure does not require individualized disclosure for each director of the number

of deferred share units granted to him or her and thus it appears each director would be required to individually disclose these under the proposed insider reporting requirements, while such units granted to named executives would not be subject to the proposed reporting requirements.

The resulting scheme of different reporting and liability for non-compliance for different insiders for the same compensation arrangements does not appear to be fair or desirable and may be confusing. Moreover, it is not clear why more onerous insider requirements would be imposed on executive officers generally but not on the five most senior members of management who are named executive officers.

It is also not clear, given the policy objectives of insider reporting, why attaching, for example, a performance or other criteria (as contemplated by section 2.2(b)(ii)) would provide absolute relief from insider reporting for compensation arrangements, whereas more typical arrangements, which do not have performance or other criteria, would be required to be reported within 10 days.

This inconsistency of requirements, timing and disclosure, for both different insiders and for the same or only slightly different arrangements, suggests the exceptions do not adequately address the appropriate exemption of compensation arrangements from the Instrument. The securities legislation already addresses directly the requirements for executive and director compensation disclosure, and it does not appear to be appropriate to subject executive compensation disclosure indirectly to another regime. Based on this and the statement by the CSA in the Companion Policy that "compensation arrangements are not the primary focus of the Multilateral Instrument", the simplest approach would be to exempt from the Instrument compensation arrangements on the basis that, for named executive officers, these would be specifically disclosed any in event under executive compensation disclosure requirements and for directors, their arrangements are disclosed on a narrative basis.

Definition of "Security of a Reporting Issuer"

We believe that the reference in clause (b) of the definition of "security of a reporting issuer" to "a security, the market price of which varies materially with the market price of a security of the reporting issuer" is ambiguous in that it could expand the scope of insider reporting to trades in securities issued by another issuer whose trading price closely correlates to the trading price of the reporting issuer of which the person is an insider. While we appreciate that this definition is substantially similar to that contained in section 76(6) of the *Securities Act* (Ontario) (the "Act"), we note that the scope of the trading prohibition in section 76 of the Act is narrower than the scope of reporting under the proposed Instrument. While the language of section 76(6)(b) of the Act would have to be carefully considered by an insider before undertaking a trade, it would not be appropriate to expose insiders to ambiguity in their reporting obligations under the proposed Instrument by perpetuating the use of this language. Accordingly, we believe that clause (b) of the definition should be amended to replace the phrase "varies materially with the market price"

with the phrase “is derived from, referenced to or based on”, similar to that contained in the definition of “derivative”.

Definition of “Underlying Interest”

We note that the term “underlying interest”, which is defined in OSC Rule 14-501, is used in section 2.2(a) of the proposed Instrument. The use of this defined term in Ontario does not appear intentional, as the defined term “underlying interest” is not used in the definition of “derivative” in the proposed Instrument. We recommend replacing the term “underlying interest” used in section 2.2(a) with the term “underlying security, interest, benchmark or formula”, which is used in the definition of “derivative”, to ensure clarity as well as consistency across those jurisdictions that do not have a local rule defining “underlying interest”.

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Please do not hesitate to contact John Tuzyk at 416-863-2918 or Chris Hewat at 416-863-2761 if you would like to discuss these comments.

Yours very truly,

BLAKE, CASSELS & GRAYDON LLP

c. Stephen Ashbourne
Aaron Palmer