

July 30, 2004

SENT BY MESSENGER

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
The Manitoba Securities Commission
Ontario Securities Commission
L'authorité des marchés financiers
New Brunswick Securities Commission
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:

Proposed Amendment to and Restatement of National Instrument 55-101 “Exemption From Certain Insider Reporting Requirements” and Companion Policy 55-101 CP “Exemption from Certain Insider Reporting Requirements”

This letter is in response to the Request for Comment concerning Proposed Amendment to and Restatement of National Instrument 55-101 “Exemption From Certain Insider Reporting Requirements” (the “Proposed Instrument”) and Companion Policy 55-101CP “Exemption From Certain Insider Reporting Requirements” (the “Proposed Policy”). As requested in the Notice, this letter is being provided in duplicate and a diskette containing the submission is also enclosed.

Our comments below follow the headings used in the Request for Comment.

1. Part 2-Exemption from Insider Reporting for Certain Directors and Senior Officers

The exemptions from insider reporting requirements in the Proposed Instrument apply to a director of a subsidiary of a reporting issuer, provided that the director is not a director of a

“major subsidiary” and to a senior officer of a reporting issuer or subsidiary provided that the senior officer is not “in charge of” a principal business unit, division or function of the reporting issuer or a “major subsidiary” of the reporting issuer. It is common for senior officers of an issuer to act as directors of subsidiaries of the issuer. The exemptions do not appear to be available to senior officers who would be exempt from the insider reporting requirements but for the fact that they also act as directors of a subsidiary of the reporting issuer, even if the subsidiaries for which they act as directors are not “major subsidiaries”. This is because the condition under subsection (c) of Sections 2.1, 2.2 and 2.3 cannot be met by individuals who hold multiple positions. There is no policy reason for this and we suggest that the exemptions be available to those individuals as well.

2. Major Subsidiary

The definition of “major subsidiary” may be overinclusive for larger issuers with international operations. Such issuers typically adopt a corporate structure intended to address legal requirements in the various jurisdictions in which they operate and to enable them to generate income from worldwide operations on as tax-efficient a basis as possible. This may result in the issuer organizing certain subsidiaries solely for the purposes of handling international sales and other subsidiaries solely for purposes of holding an interest in assets. Such subsidiaries may technically fall within the definition of “major subsidiary” even though the subsidiary is not material to the issuer in terms of being a principal business unit, division or function of the reporting issuer. You should consider whether to modify the definition of “major subsidiary” to address those “major subsidiaries” which do not constitute a principal business unit, division or function of the reporting issuer.

Moreover, for subsidiaries of issuers with worldwide operations it is common to appoint individuals as officers or directors to meet local legal or residency requirements, even though such individuals do not have substantive authority. (For example, a Canadian subsidiary of a U.S. company may appoint a resident Canadian individual as a director to meet residency requirements under Canadian corporate legislation, but remove the individual’s powers and liabilities through a unanimous shareholder declaration.) There should be an exemption for directors even of “major subsidiaries” where the powers of the director have been curtailed by statute and agreement.

3. List of Exempted Insiders

Subsection 4.1(c) requires that a reporting issuer maintain reasonable written policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer. We agree that it is best practice for issuers to have an insider trading policy, however, the Proposed Instrument is not the appropriate place to introduce a requirement that all reporting issuers prepare and maintain such policies. The requirement in subsection 4.1(c) should be a precondition only to relying on the Proposed Instrument, as it is

currently for staff to support applications for relief from insider reporting requirements (CSA Staff Notice 55-306 – *Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents*), and not a positive obligation imposed upon all reporting issuers regardless of whether or not they rely on the Proposed Instrument. We suggest, therefore, that the introductory language to section 4.1 be redrafted as follows to clarify this:

“Subject to section 4.2, a reporting issuer which wishes to rely on this Instrument shall prepare and maintain”.

4. Meaning of “Discrete Investment Decision”

The meaning of this phrase is very unclear and the guidance in the companion policy is limited. It would be helpful to confirm, for example, that the decision to enrol in an automatic securities purchase plan is not a “discrete investment decision”. In addition, most automatic securities purchase plans enable the participant to give revised instructions from time to time respecting the level of his or her participation in the plan. It would be helpful to confirm that a participant does not, by giving a revised instruction affecting the individual’s level of ongoing participation in the plan, thereby make a “discrete investment decision”.

We appreciate the opportunity to have commented on the Proposed Instrument and the Proposed Policy. If you have any questions or comments please feel free to contact Eleanor Farrell at 416-862-6813, Andrew MacDougall at 416-862-4732 or Janet Salter at 416-862-5886.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

Enclosure