



Market Regulation Services Inc.

Services de réglementation du
marché inc.

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BY E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission

c/o

British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2

Attention: Denise Duifhuis

- and -

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Attention: Madame Anne-Marie Beaudoin, Directrice du secrétariat

Dear Sirs and Mesdames:

www.rs.ca

Re: Proposed Amendments to National Instrument 55-101 Insider Reporting Exemptions and Companion Policy 55-101CP Insider Reporting Exemptions

Staff of Market Regulation Services Inc. ("RS") has reviewed the proposed amendments (the "Proposed Amendments") to National Instrument 55-101 - *Insider Reporting Exemptions* and Companion Policy 55-101CP - *Insider Reporting Exemptions* (the "Insider Reporting Exemption Instrument") as published in the OSC Bulletin on October 27, 2006 at (2006) 29 OSCB 8441. RS notes that the Proposed Amendments are considered part of "Phase 1" and that additional exemptions from the insider reporting requirements may be considered in "Phase 2".

Background

RS is recognized by the Autorité des marchés financiers, the Ontario Securities Commission, the Manitoba Securities Commission, the Alberta Securities Commission and the British Columbia Securities Commission as a self-regulatory entity under National Instrument 21-101 - *Marketplace Operation* (the "Marketplace Operation Instrument") and operates as a Regulation Services Provider, as defined in the Marketplace Operation Instrument. RS, among other things, regulates trading activity by Participants and Access Persons (as these terms are defined in the Universal Market Integrity Rules, or "UMIR") on these marketplaces to ensure transactions are executed in compliance with UMIR.

Rule 6.2 of UMIR requires that each order for the purchase or sale of a particular security entered on a marketplace for the account of an insider or significant shareholder of the issuer of that security shall contain a designation acceptable to RS. The order designations enable RS to monitor the trading activity on Canadian marketplaces of insiders and significant shareholders. Such monitoring allows RS to assist securities regulatory authorities by providing initial detection of possible violations of securities legislation principally related to insider trading.

On June 16 of this year, RS issued Market Integrity Notice 2006-014 - *"Insider" and "Significant Shareholder" Markers* (a copy of which is attached for your reference). In that guidance, RS refers to the Insider Reporting Exemption Instrument. Specifically, RS states that to establish whether a particular transaction is exempt from insider reporting obligations, reference must be made to the applicable securities legislation and requirements, including, but not limited to the Insider Reporting Exemption Instrument. Further, RS stated that orders entered onto a marketplace for the account of the issuer under a normal course issuer bid must be marked "insider" and RS referred specifically to Part 6 of the Insider Reporting Exemption Instrument, which discussed the modified CSA reporting requirement under a normal course issuer bid.

National Instrument 55-101 Insider Reporting Exemptions

The definition of a “normal course issuer bid” in the Insider Reporting Exemption Instrument refers to “a normal course issuer bid as defined in the policies of The Montreal Exchange, The TSX Venture Exchange or The Toronto Stock Exchange, conducted in accordance with the policies of that exchange”. This definition does not offer a comprehensive list of the exchanges in Canada that may allow for normal course issuer bids. Specifically, the list excludes Canadian Trading and Quotation System Inc. (“CNQ”), which was recognized in Ontario as an exchange under the Marketplace Operations Instrument in 2004. On the other hand, the Bourse de Montréal is listed even though that exchange trades only derivatives for which the concept of a normal course issuer bid is not appropriate. Since the rules of an exchange must be approved by the applicable securities regulatory authorities in accordance with the rule protocols in effect between the exchange and the securities regulatory authorities, RS would suggest a more “generic” provision such as: “a normal course issuer bid as defined in the rules or policies of a recognized exchange for the purposes of *National Instrument 21-101 - Marketplace Operation*, that is conducted in accordance with the rules or policies of that recognized exchange”.

Phase 2 Proposed Amendments

The Proposed Amendments do not appear to impact the order designation requirements under UMIR. RS would urge the CSA to bear in mind the requirements under UMIR when entertaining future proposed amendments to exemptions from insider trade reporting.

Summary Reporting of Insider Trades by Marketplaces

RS would like to draw to the attention of the CSA one matter which is beyond the scope of the Insider Reporting Exemption Instrument but relates to the reporting of insider trading activity. The securities commissions in Alberta, British Columbia and Ontario have ordered the TSX Venture Exchange and the Toronto Stock Exchange to publicly provide summary information on trading on their exchanges by insiders. That summary information would be prepared based on the presence of the order markers required under UMIR. As such, any “Phase 2” amendments that would impact the filing of an insider trading report would affect order marking requirements under UMIR and, as such, the summary insider reports required of the TSX Venture Exchange and Toronto Stock Exchange.

With the advent of multiple marketplaces trading the same securities, “insiders” could direct the execution of their orders to marketplaces that are not subject to the reporting requirements of the TSX Venture Exchange or the Toronto Stock Exchange. RS believes that such “regulatory arbitrage” should be avoided (and that regulatory requirements should not favour one trading venue over any other). If the summary

insider information is to provide a “complete picture” and be useful to the investing public, the requirement for summary disclosure of insider trading activity should be applicable to all marketplaces that are recognized under the Marketplace Operation Instrument.

If you have any questions regarding this letter, please do not hesitate to contact me at (416) 646-7251.

Kind regards,

“Karen Green”

Karen Green,
Senior Legal Counsel

cc. Tom Atkinson, President and CEO
Rosemary Chan, Vice-President Market Policy and General Counsel
Maureen Jensen, Vice-President Market Regulation, Eastern Region