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Via E-Mail

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

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and

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Dear Ms. Duifhuis and Madame Beaudoin,

Re: Proposed Amendments to National Instrument 55-101 Insider Reporting Exemptions ("NI 55-101") and Companion Policy 55-101CP ("55-101CP") Insider Reporting Exemptions- Request for Comment

RBC is pleased to have the opportunity to provide its comments on the Canadian Securities Administrators' (the "CSA") proposed amendments to the Insider Reporting Exemptions.

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GENERAL COMMENTS ABOUT NI 55-101

Current Amendments (Phase 1)

We applaud the CSA for proposing to delete the record-keeping requirements in Part 4 of NI 55-101. We believe that the requirement to maintain a list of insiders both exempted and not exempted from the insider reporting requirement to be unduly onerous and we are supportive of this change.

We support the CSA's proposal to change the definition of "major subsidiary" to increase the relevant percentages from 10 to 20%. From RBC's perspective, however, the proposed change to the definition of "major subsidiary" would not meaningfully increase the number of insiders at RBC able to rely on the exemption in NI 55-101.

Proposed Future Amendments (Phase 2)

As noted in the CSA's request for comments, the CSA will review whether the current insider reporting requirements are appropriate or whether the insider reporting system would be more effective if it focused the reporting obligation on a smaller group of insiders.

We submit that amendments to focus the insider reporting requirements on a smaller group of insiders would improve the effectiveness of insider reporting while significantly reducing the administrative burden for issuers and insiders. The two policy reasons for insider reporting most commonly cited are 'deterrence' (i.e., requiring insiders to report their trades will deter them from trading on the basis of inside information) and 'signalling' (i.e., the market generally can gain insight into the prospects of a company by analyzing the trading of the people inside the company most familiar with its prospects).

Of these two policy bases for the insider reporting requirements, we believe that the 'signalling' basis is the more significant. While there is some merit to the argument that requiring reporting of trades by insiders might deter illegal insider trading, it seems to us that someone who deliberately sets out to commit a serious offence by trading on the basis of inside information will not be meaningfully deterred from that objective by the prospect of prosecution for failure to file the trades. As a result, we believe that the CSA should focus its attention on amendments that would improve the 'signalling' effect of insider reporting and, at the same time, reduce the administrative burden on issuers and their senior officers.

We are of the view that implementing practices to operationalize insider reporting in the context of the current definition of "insider" in the Securities Acts (even with the currently available exemptions) is challenging in a large company with multiple subsidiaries. Due to our size and the customary titling practices used by North American financial institutions, strictly applying the definition of "Insider" in the provincial Securities Acts, results in RBC having approximately 4200 insiders worldwide.

Even excluding Insiders who do not routinely have access to material information about RBC, we are of the view that the current rules require too many individuals to file insider reports, particularly when compared to the requirements in the US and the policy objectives of insider reporting.

Proposed Definition of "Ineligible Insider"

In support of your Phase 2 review of the insider reporting requirements, we propose that the current definition of "Ineligible Insider" as defined in NI 55-101 be amended as follows. This amended definition is based on the definition of "Senior Officer" in section 485.1 of the Bank Act.

Under our proposal, all Insiders of a reporting issuer are exempt from the insider reporting requirement under Canadian securities legislation except "Ineligible Insiders". Ineligible Insiders are defined as follows:

(a) a director of the reporting issuer;
(b) the chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief legal officer, chief auditor or chief actuary of the reporting issuer;
(c) a natural person who performs functions for the reporting issuer similar to those performed by a person referred to in paragraph (b);
(d) the head of the strategic planning unit of the reporting issuer or the unit of the company that provides human resources services to the reporting issuer; or
(e) any other officer reporting directly to the reporting issuer's board of directors, chief executive officer or chief operating officer.

The purpose of our proposed amendment is to shift the emphasis of the insider reporting requirement to the creation of a more useful signaling device for investors by communicating clearly the security trading patterns of the most senior officers of a reporting issuer who are in the best position to understand the prospects and financial condition of the issuer.

In our view, the current requirement for a broad group of “insiders” to report trades does little if anything to deter people from engaging in “insider trading”. As mentioned previously, if a person is willing to illegally trade in the securities of a reporting issuer on the basis of material undisclosed information obtained from his or her special relationship with the issuer, it is likely that he or she would also breach the requirement to report these trades.

On the other hand, the requirement to file insider reports can be a valuable information source for investors by requiring the disclosure of security trading patterns of senior officers of a reporting issuer. However, under the current definition of “ineligible insider”, large reporting issuers can have well over a hundred reporting insiders, many of whom do not have any significant influence over the general management or strategic direction of the reporting issuer.

Given these large numbers of reporters, the potentially useful information provided by the reporting of trades by the most senior officers of a reporting issuer can be lost in the “noise” of numerous trades by persons making day-to-day purchase and sale decisions unique to their own economic circumstances. If reporting were limited to directors and certain of the most senior officers of a reporting issuer as set out in our proposed definition above, it would be significantly easier for the public to identify a change in the security trading patterns of those persons most knowledgeable about the financial position and strategic direction of a reporting issuer. In addition, with fewer reporting insiders, it would be significantly easier for the public to distinguish between broad changes in trading patterns by the directors and senior management who truly ‘run’ the company and isolated trades made by multitudinous technical insiders who are likely trading in most cases for reasons largely unrelated to the insider’s evaluation of the financial health of the reporting issuer (e.g. to cover a tax liability or make a down payment, etc.).

In conclusion, we submit that focusing the insider reporting requirement on those who truly are in the best position to know the issuer’s prospects and developments will enhance significantly the signaling function of the insider reporting requirement and reduce the administrative burden on issuers and their executives in complying with insider reporting rules. In addition, if the number of reporting insiders was reduced in the manner we propose, it would provide greater harmonization of our insider reporting requirements with those of the U.S. and provide a platform under which the CSA could consider accelerating filing timing.

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Other General Comments

System for Electronic Disclosure by Insiders (SEDI)

We strongly support enhancements to SEDI. We believe that the insider reporting requirements under Canadian securities legislation are confusing and that SEDI is not user friendly nor 'foolproof'. As a result, insiders are intimidated by the system, large amounts of executive time are spent on reporting and there are countless errors in the database. We believe that one of the ways to improve the accuracy of SEDI and to optimize efficiency, is to allow reporting issuers to make one blanket filing on SEDI covering all of its reporting insiders when there is an issuer action (e.g. stock split), instead of requiring each of the issuer's most senior executives to waste countless hours filing their own insider reports.

Harmonization of Penalties for Missed or Erroneous Filings

We support the proposal noted in the Request for Comments to harmonize insider reporting requirements across Canada. As part of this, we submit that it also is important at the same time to harmonize penalties for missed or erroneous filings and, in particular, the administrative practices applied in different provinces as to the circumstances in which such penalties will be levied and available exemptions.

RESPONSES TO SPECIFIC QUESTIONS

1. The exemption in Part 5 of NI 55-101 that allows insiders to defer reporting acquisitions under an automatic securities purchase plan is currently available only to directors and senior officers of the reporting issuer or a subsidiary of the reporting issuer. Should we make this exemption available to persons who own or control more than 10% of the voting securities of a reporting issuer? For example, this would allow these persons to participate in a dividend reinvestment plan and report on the additional shares they acquire in this way within 90 days of the end of the calendar year. If so, should there be limits on the number or percentage of securities that the insider can acquire before being required to file a report?

At RBC, there is no person who owns or controls more than 10% of the voting securities of RBC. Therefore, RBC is not in a position to comment on this question.

2. We are proposing to let insiders who are executive officers or directors of a reporting issuer rely on the ASPP exemption in section 5.1 of NI 55-101 for the acquisition of stock options or similar securities granted to the insider if the reporting issuer has previously disclosed in a press release filed on SEDAR the existence and material terms of the grant.

(a) Could the same result be achieved by requiring the reporting issuer to file a notice on SEDAR, rather than issuing a press release?

(b) In the future, rather than require issuers to file a press release on SEDAR, should we enhance the System for Electronic Disclosure by Insiders (SEDI) to allow reporting issuers to disclose grants of stock options and issuer derivatives like deferred share units, restricted share awards and long term incentive plan units in a report of the issuer? This report could be analogous to the "issuer event" report required under section 2.4 of National Instrument 55-102 SEDI.

(a) RBC does not at present issue stock options to insiders pursuant to an automatic securities purchase plan. Therefore, insiders file reports on SEDI within 10 days of stock option grants. If this proposal is adopted, however, we believe that filing a notice on SEDAR would be sufficient notice to the market of this event, especially as it involves a grant by the company rather than an investment decision by an insider.
(b) As indicated above, we support enhancements to SEDI that would allow issuers to report grants of the nature mentioned as an 'issuer event' that populates the insider reports of the individuals affected rather than requiring individual filings.

3. The current concern in the United States about options backdating illustrates that the market is keenly interested in the timing of stock option grants. We understand that some investors time their own market purchases of securities of an issuer based on option grants to insiders that have been publicly disclosed. We believe that stock options or similar securities granted to executive officers or directors need to be disclosed on a timely basis – either in an insider report filed on SEDI within 10 days or a press release filed by the issuer on SEDAR. We are willing to allow other insiders to rely on the ASPP exemption for grants of stock options and similar securities, provided the plan under which they are granted meets the definition of an ASPP, the conditions of the exemption are otherwise satisfied, and the insider is not making a discrete investment decision in respect of the grant. Does disclosure of grants of options and issuer derivatives to executive officers and directors provide a greater

"signalling" function or "deterrence" value than disclosure of similar grants made to other insiders?

RBC does not at present issue stock options to insiders pursuant to an automatic securities purchase plan. Therefore, insiders file reports on SEDI within 10 days of stock option grants. That said, such grants do not in our view enhance the signaling function of insider reporting as they represent compensation decisions by the company rather than investment decisions by insiders. We do not believe that the deterrence function applicable to individual insiders is relevant to compensation decisions made by the companies they work for.

Thank you for the opportunity to submit our comments. We would be pleased to discuss with you any of the matters outlined in this letter.

If you have any questions, please contact me, Melanie Saxe [Manager, Enterprise Regulatory Policy and Affairs Group (416) 955-8186] or Paul Guthrie [Counsel, RBC Law Group (416) 974-6516].

Yours truly,

"Tom Smee"

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