



January 25, 2007

SECTIONS

- Aboriginal Law
- Administrative Law
- Alternate Dispute Resolution
- Business Law
- Canadian Corporate Counsel Association - Toronto Chapter
- Charity and Not-For-Profit
- Citizenship and Immigration
- Civil Litigation
- Constitutional & Civil Liberties
- Construction Law
- Criminal Justice
- Education Law
- Entertainment Media & Communications
- Environmental Law
- Family Law
- Feminist Legal Analysis
- Health Law
- Information & Technology
- Insolvency Law
- Insurance Law
- International Law
- Labour Relations
- Law Practice Management
- Municipal Law
- Natural Resources and Energy
- Pension and Benefits
- Privacy Law
- Public Sector Lawyers
- Real Property
- Sexual Orientation & Gender Identity
- Sole, Small Firm & General Practice
- Taxation Law
- Trusts & Estates
- Workers' Compensation
- Young Lawyers' Division

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 Denise Duifhuis  
 British Columbia Securities Commission  
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 Montréal QC H4Z 1G3

Dear Sirs and Mesdames:

**Re: Request for Comment on Proposed Amendments to National Instrument 55-101**  
**Insider Reporting Exemptions and Companion Policy 55-101CP**

This letter is submitted in response to the request for comment published October 27, 2006 by the Canadian Securities Administrators ("CSA") on proposed amendments to National Instrument 55-101 *Insider Reporting Exemptions* and Companion Policy 55-101CP ("NI 55-101").

This submission is provided by the Securities Law Subcommittee (the "OBA Subcommittee") of the Business Law Section of the Ontario Bar Association. The members of the OBA Subcommittee are listed in the attached Appendix. Please note that not all of the members of the OBA Subcommittee participated in or reviewed this submission, and that the views expressed are not necessarily

those of the firms and organizations represented by members of the OBA Subcommittee.

### **General**

In general, we support the current proposed Insider Reporting Amendments (Phase 1) and are pleased that the CSA is taking interim steps to reduce the regulatory burden of insider reporting prior to the more expansive changes planned in Phase 2, including the harmonization of insider reporting requirements across Canada. We recognize that the most expeditious way to make improvements to the current insider reporting system on an interim basis is to implement changes to NI 55-101 of the scope being proposed in the current request for comment.

### **Deletion of Record-Keeping Requirements & Change to Definition of “Major Subsidiary”**

We agree that deletion of the insider notification and record-keeping requirements in NI 55-101 and including the latter as an example of a best practice in 55-101CP will help reduce the administrative burden of insider reporting for issuers, particularly larger issuers who have a significant number of insiders relying on an exemption. This amendment may also, as the CSA intends, make it easier for eligible insiders to rely on an exemption, thereby reducing the number of insiders filing insider reports.

The CSA is also proposing to change the definition of “major subsidiary” to increase the relevant percentages from 10 to 20% as a way to further reduce the number of insiders filing insider reports. We doubt that such a change will have more than a marginal impact on the number of insiders who are exempt from reporting for most issuers, but have no objection to raising the percentages from 10 to 20% or higher. However, the proposed change to the definition of “major subsidiary” (together with the other proposed changes) are only incremental measures towards addressing the unnecessary burden caused by the large number of individuals who are required to file insider reports under current legislation. We would support a more fundamental approach that focused instead on the directors and very senior officers of the public company having knowledge of the company as a whole (and not including individuals who are directors and officers of non-public subsidiary companies only). We believe that it is their trading activity that is the most relevant to the securities market. We appreciate that the current rules attempt to carve out by way of exemptions the individuals who are caught by the definition of insider who do not in the ordinary course have access to material undisclosed information, but the CSA has an opportunity

with the Phase 2 amendments to adopt a new model for insider reporting, similar to the U.S. model, which captures a smaller group of insiders for reporting purposes, which will obviate the need to rely on complicated reporting exemptions. As well, under the current Canadian system of insider reporting, the volume of insider reports makes it difficult for investors to determine whether the trading activity of any particular insider who is not a director or executive officer should be considered relevant. We believe it is possible to further reduce the number of individuals required to file insider reports without taking away relevant information to the market.

### **ASPP Exemption**

We offer the following comments on the specific questions set out in the Request for Comments (using the paragraph numbering therein).

1. We do not believe that the ASPP exemption should be available to persons who own or control more than 10% of the voting securities of a reporting issuer. We believe that once this threshold has been met, the market would be interested to know of any further acquisitions of securities by these persons in a timely manner. In the most likely scenario where these persons participate in a dividend reinvestment plan, the infrequent reporting required in connection with dividends (perhaps a few times a year) is not so unduly burdensome to necessitate annual reporting. Also, dividend reinvestment for a 10% or more shareholder may yield a not insignificant number of securities, which further supports the need for timely reporting.
2. We believe that the proposal to allow certain insiders to rely on the ASPP exemption for the acquisition of stock options introduces some confusion as to the proper way to report stock option grants. We find it difficult to envision how one could have taken the view that stock option grants were “automatic” prior to the proposed amendment, but with the formalization of this exemption, issuers and their insiders will now consider whether they should take advantage of this exemption. In our view, a preferable approach may well be to include guidance in the companion policy as to the circumstances (if any) in which it would be appropriate for insiders to rely on the ASPP exemption with respect to the reporting of stock option grants. In any case, the requirement to file a press release greatly diminishes the utility of this exemption for executive officers and directors since an issuer will be required to publicly disclose essentially the same information in the same time frame as it would in insider reports as well as still being required to file insider reports under the ASPP

exemption. We also question the different treatment for executive officers and directors as opposed to other insiders who are senior officers. If stock option grant information for other senior officers is not as important to the market as information about stock option grants to executive officers and directors (which we believe to be the case), we question why the former group should be required to report at all.

- a. We believe that requiring a reporting issuer to file a notice on SEDAR would be sufficient rather than requiring the issuance of a press release. If an insider does not take advantage of this exemption, the requirement would be to file the information on SEDI (which is less user-friendly than SEDAR) within ten days, and we question why a press release is necessary if this exemption is relied on.
  - b. We would support the development of some form of report of the issuer to disclose grants of stock options to its insiders as issuers typically grant stock options in bulk, that is, to a number of insiders on the same date. Under the current rules, annual stock option grants can place a significant burden on large public companies that assist their reporting insiders with filing of reports. It would be useful to have such a report be consistent with the ASPP exemption so that there are not multiple reports available for reporting stock option grants.
3. As noted in comment 2 above, we question the differential treatment of executive officers and directors as compared to other insiders. In any case, we agree that if trading activity by insiders provides a “signaling” function or “deterrence” value then it is the activities of only a very small circle of senior insiders that would likely be relevant to the market. In our view, casting a wider reporting net places an unjustified burden on reporting companies and their insiders that is out of all proportion to the utility of the information that such reports would provide. Consistent with our previous comments, we believe this is an issue that should be considered by the CSA in Phase 2.

### **Future Changes to Insider Reporting Exemptions**

We support the CSA’s plans to adopt harmonized insider reporting requirements across Canada. We would also support a proposal to accelerate the time frames for filing insider reports but only in conjunction with a smaller group of reporting insiders. Otherwise, a reduced time frame would only create additional

regulatory burden for issuers if they have to file the same number of reports within a shorter period of time. As stated above, we believe the insider reporting system would be more effective if it focused the reporting obligation on a smaller group of insiders. We welcome the opportunity to comment on the Phase 2 amendments at a later date.

We appreciate this opportunity to comment on the proposed amendments to NI 55-101. If you have any questions, please direct them to Richard Lococo (richard\_lococo@manulife.com or 416-926-6620) or Kay Song (kay\_song@manulife.com or 416-926-3427).

Yours truly,

Securities Law Subcommittee  
Business Law Section  
Ontario Bar Association

## Appendix

### OBA SECURITIES LAW SUBCOMMITTEE

#### Members:

Richard A. Lococo (Chair), *Manulife Financial*  
 Simon Archer, *Barrister & Solicitor*  
 Aaron J. Atkinson/Janne M. Duncan, *Fasken Martineau DuMoulin LLP*  
 Timothy S. Baikie, *Canadian Trading and Quotation System Inc.*  
 Justin Beber/Kenneth R. Wiener, *Goodmans LLP*  
 Mary Condon, *Osgoode Hall Law School of York University*  
 Gil I. Cornblum, *Dorsey & Whitney LLP*  
 Anoop Dogra, *Blake, Cassels & Graydon LLP*  
 Eleanor K. Farrell (Secretary), *CPP Investment Board*  
 Paul J. Franco, *Heenan Blaikie LLP*  
 Margaret I. Gunawan, *Barclays Global Investors Canada Limited*  
 Henry A. Harris, *Gowling Lafleur Henderson LLP*  
 Barbara J. Hendrickson, *McMillan Binch Mendelsohn LLP*  
 Michael D. Innes, *Osler, Hoskin & Harcourt LLP*  
 Glen R. Johnson/Cornell C.V. Wright, *Torys LLP*  
 William R. Johnstone/Kathleen Skerrett, *Gardiner Roberts LLP*  
 David R. Kerr/Kay Y. Song, *Manulife Financial*  
 Samir Y.A. Khan, *Russell Investments Canada Limited*  
 Steven R. Kim, *CIBC World Markets*  
 Kenneth G. Klassen/J. Alexander Moore, *Davies Ward Phillips & Vineberg LLP*  
 Walter C. Lehman, *OMERS*  
 Susan I. McCallum, *Barrister & Solicitor*  
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 Brian L. Prill, *McLean & Kerr LLP*  
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 Arlene D. Wolfe, *Barrister & Solicitor*

#### Liaison:

Erez Blumberger, *Ontario Securities Commission*  
 Luana DiCandia/Julie K. Shin, *Toronto Stock Exchange*