



March 16, 2009

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

c/o Noreen Bent
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British Columbia Securities Commission
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Madame Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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C.P. 246, Tour de la Bourse
Montréal, Quebec
H4Z 1G3

Dear Sirs and Mesdames:

**Re: Notice and Request for Comment – Proposed National Instrument 55-104
Insider Reporting Requirements and Exemptions and related consequential
amendments**

This letter is submitted by the Business Law Section of the Ontario Bar Association (“OBA”) in response to the request for comment published December 19, 2008 by the Canadian Securities Administrators (“CSA”) on proposed National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the “Proposed Instrument”) and related

proposed consequential amendments to other instruments. This letter was prepared by members of the Securities Law Subcommittee of the OBA Business Law Section.

General

In 2007, the OBA Securities Law Subcommittee commented on the CSA's Phase 1 amendments, which were interim measures to reduce the regulatory burden of insider reporting. That submission also expressed support for the CSA's plans for Phase 2 amendments for the purpose of harmonizing insider reporting requirements across Canada, and in particular endorsed the view that the insider reporting system would be more effective if it focused the reporting obligation on a smaller group of key insiders. We welcome the Proposed Instrument as an improvement over the current regime. However, as noted further below, we continue to believe that scope of the insider reporting requirements should be further limited to more closely resemble the U.S. model where reporting is effectively limited to directors, executive officers and major shareholders of the reporting company itself, and in general does not reach down to directors and officers of subsidiary companies.

The following are our comments on the specific questions for which the CSA is seeking comment.

1. Definition of “reporting insider”

2. Definition of “major subsidiary”

By introducing the concept of a “reporting insider”, the Proposed Instrument in large measure streamlines and simplifies the insider reporting regime, and largely eliminates the need for complicated exemption provisions.

In particular, subject to our comments below (relating to major subsidiaries), we believe the two criteria underlying the definition of reporting insider (routine access to undisclosed material information and significant influence) are the correct ones. However, we believe that the reporting regime is needlessly complicated by retaining the concept of a “major subsidiary”, since in our view the two criteria referred to above should be applied with respect to the reporting issuer on a consolidated basis, rather than applied to any particular subsidiary, however “significant” financially that subsidiary may be on a stand-alone basis. Further increasing (or reducing) the financial test for a “major subsidiary” is not a useful exercise, since it focuses attention on one particular part of the consolidated operations of the reporting issuer, which may or may not be significant for the whole enterprise.

By removing the concept of major subsidiaries, the scope of the reporting regime would be effectively equivalent to the U.S. system which (as noted previously) appropriately focuses on directors, executive officers and major shareholders of the reporting company itself, and also extends the reporting requirements to others acting in a similar capacity,

thereby preventing such persons from technically avoiding the reporting requirements. If the concept of “major subsidiary” is removed from paragraphs (a), (b), (c), (e) and (i) of the definition of reporting insider, the two criteria in “basket” paragraph (i) would similarly prevent avoidance of the reporting requirement by other insiders who should be reporting.

Therefore, we suggest that the references to “major subsidiary” be removed from paragraphs (a), (b), (c), (e) and (i) of the definition of reporting insider.

3. Reporting deadline

We support the retention of the current ten day timeline for filing initial reports to accommodate new filers as well as the acceleration of the reporting deadline from 10 days to five calendar days for subsequent insider reports. We believe that the revised reporting deadlines are appropriate, whether or not the circle of reporting insiders is further narrowed as suggested above.

4. Definition of “significant shareholder”

We agree in concept that it would be preferable if the disclosure threshold for a “significant shareholder” under insider reporting requirements and “early warning” requirements is the same. The difficulty, however, is that for “early warning” reporting purposes, it makes sense to base the test on a class by class basis (given that the take-over threshold is measured on that basis), whereas it makes sense to base the insider reporting threshold on “all of the issuer’s outstanding voting securities”, since the underlying rationale of the insider reporting requirements relates to influence over the reporting issuer. Accordingly, we do not support changing the disclosure threshold for a “significant shareholder” so that it is calculated in respect of voting securities on a class by class basis.

5. Concept of “post-conversion beneficial ownership”

In our view, the calculation of the 10% threshold for the definition of “significant shareholder” should not be based on the concept “post-conversion beneficial ownership”. As noted above, the underlying rationale of the insider reporting requirements relates to influence over the reporting issuer. A security holder holding less than 10% of an issuer’s voting rights on a pre-conversion basis is generally not in a position to exercise sufficient influence until the conversion rights are exercised and further voting securities are acquired. Therefore, in our view, it is not appropriate for the security holder to be considered a “significant shareholder” until it actually has those voting rights. In any case, we believe that it is inappropriate to include convertible securities that are significantly out of the money in making such this calculation, since it may be unlikely such conversion rights will ever be exercised. There would also be difficulty in coming up with an appropriate test for determining when a conversion right is “significantly” out of the money. In a volatile market, it may mean that a shareholder’s status as a “significant shareholder” could change back and forth over a relatively short period of time without any change in holdings.

6. Issuer grant report

In our previous comment letter, we indicated that we would support the development of some form of issuer report to disclose grants of stock options or other compensation arrangements to insiders. Such a report would accommodate the common practice of issuers granting stock options to insiders at the same time in the compensation cycle every year and reduce the administrative burden associated with those grants for issuers filing insider reports on behalf of their insiders. We support the proposal to allow an issuer to file an “issuer grant report” on SEDAR to assist its insiders in their reporting of option (or other compensation) grants, which would exempt the insider from the requirement to file an insider report by the ordinary filing deadline and instead allow them to file an alternative report on an annual basis. Further, there should be a separate category created on SEDAR for purposes of filing issuer grant reports and other insider related reports. Currently, there is only a default “Other” category, which if used for filing insider related reports, would make them difficult to locate. We believe that the proposed filing deadline of 90 days from the end of the calendar year is appropriate, although we believe that most reporting issuers would be able to comply with a 30 day filing deadline if necessary.

7. Report by certain designated insiders for certain historical transactions

We are in favour of the proposal to require individuals who have been designated or deemed to be insiders of a second issuer to be required to file insider reports in accordance with the deemed insider look-back provisions in paper format on SEDAR. While the primary reason should not be to avoid difficulties in filing such reports on SEDI, we agree that these filings commonly arise in a take-over bid and it makes sense for market participants to view these filing in conjunction with other filings on SEDAR relating to the take-over bid. As discussed in the comment above, such filings should be made on SEDAR in a category specifically designated for insider related reports.

8. Disclosure in shareholder meeting information circulars

We do not agree with the proposal to require insiders to disclose whether any of its insiders have been subject to late filing fees in its information circular. Over the past several years, the disclosure required in information circulars has steadily increased and it is unnecessary to further expand that document by including such information. As an alternative, we would be supportive of the CSA maintaining a list of late filers.

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We appreciate this opportunity to comment on the Proposed Instrument. If you have any questions, please direct them to Kay Song (kay_song@manulife.com; 416-926-3427) or Richard Lococo (richard_lococo@manulife.com; 416-926-6620).

Yours truly,

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