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Ms. Noreen Bent
Manager and Senior Legal Counsel, Corporate Finance
B.C. Securities Commission
Box 10142, Pacific Centre
701 West Georgia St.
Vancouver, BC V7Y 1L2
by email: nbent@bcsc.bc.ca

Dear Ms. Bent:

This is in response to the request for comments on proposed NI 55-104.

I have been a securities lawyer for in excess of 35 years – and have extensively advised issuer clients and their insiders on their insider filing requirements. I am myself an insider of some public issuers and have had to personally file Insider Reports – originally in paper form and latterly on SEDI. I found, when the SEDI requirements were introduced, the web programme was so complicated that many insiders had difficulty understanding the requirements – and my office made a point of learning the details of those requirements and has been filing Insider Reports for certain insiders of some of our issuer clients. With respect to the proposed amendments I submit the following comments:

1. It is stated that the insider reporting requirements serve two functions – deterring improper insider trading and providing investors with information about the trading activities of insiders. I frankly do not see how your proposed revisions will achieve any improvement in either of those objectives. As to them, specifically:

(a) With respect to the "deterring" function - some years ago the regulators reduced the definition of 'insider' to eliminate family members, associates and affiliates. This has resulted in the ability of persons who want to effect illicit insider trades to have them done by members of their family or by associates or affiliates. Now you are apparently further proposing a reduction in the numbers of categories of persons who have to file Insider Reports. Of course this would reduce the number of persons required to file Insider Reports – but it will do nothing to deter improper insider trading or to provide more information to investors about the trading activities of insiders.

(b) As to providing more prompt information to investors about insider trading activities do you have any significant evidence that investors access insider reports? Do you have any evidence that investors make decisions based on insider trading information? Unless you do, there is no point in requiring Insider Reports to be filed in 5 days instead of 10 days. From my personal experience, and the experience of my clients,

I know that it is already a very onerous requirement to get all Insider Reports filed within the required 10 days.

(c) Ontario charges $50 per day for late filings to a maximum of $1,000. As they enforce their imposition of these fines quite rigorously my suspicion is that their enforcement is a revenue-generating scheme. If the deadline for filing is reduced from 10 days to 5 days there will be increased numbers of late filings – and, presumably, increased late filing fees collected by the Regulators.

2. As a director of public issuers, and as a lawyer involved in preparing Information Circulars, I strenuously object to the proposal to require companies to disclose late insider filings by their insiders in their Information Circulars. What is this going to achieve other than to impose additional paperwork burdens on already overburdened public issuers? Recent amendments to the requirements for more extensive disclosure in Information Circulars and MD & A's has already resulted in those documents having to be so detailed that they are an increased financial burden to prepare and so large that, in my experience, people that receive them do not read them. In fact, increasingly, shareholders of public issuers are instructing the issuers to not send annual or AGM documentation to them.

It is a very serious idea that you are trying to impose on public issuers a requirement that they monitor and police certain activities by their insiders. Consider how the public issuers are supposed to find out information late insider filings? Can they accept statements to that effect from each of their insiders, and rely on them? Do they have to do further independent investigation? If an insider is not truthful to management about a late filing is the company going to be penalized for failing to disclose it? Frankly, this is not only a poor idea but also unnecessary. I strongly recommend that you abandon the proposal.

3. One objective that has been expressed is to gather all of the insider reporting requirements into a single instrument. If that is a problem (which I hadn't noticed) then it would be a good idea to collect all the requirements into a single instrument – and to harmonize the requirements to the extent that there is any non-harmonization at this time.

4. The proposal that I approve is to enable issuers to file information about the grant of options rather than requiring the insiders who receive the options to file Insider Reports. I have personally had the experience of being absent on vacation when my office was advised that I had been granted options – but I was not aware of them (and couldn't have filed an Insider Report) until after the expiry of the 10-day time limit. But I wonder how it is going to be possible to have the information filed by the issuer appear on the insider files of each insider of the issuer on SEDI – for viewing by outside investor? If you believe that investors are interested in seeing the details of insider trading and access SEDI for that reason then surely they must also be equally interested in seeing details of options granted to insiders. If the option grant details do not appear on the insider's insider file what is the purpose served by having the companies even issue and file the information?

This alteration will not reduce the need for the insider option recipient to file a report – it will just mean he can do it later in the year.

5. In conclusion, I refer to the old adage “if it ain’t broken don’t fix it”. There should be another adage stating that “if you are going to fix something make sure that what you do really is effective and not just an alteration that is no better than what you started with”.

One problem that I encounter regularly that should be addressed is some uncertainty about the required filings for “indirect” trades by insiders through corporations. I do not think the existing rules clearly enough define which partly owned corporations are insiders themselves and which trades by such partly owned corporations have to be shown as an indirect trade by the insider. If an insider has a family-owned corporation where, e.g., he owns 100% of the voting shares (being 10% of the total issued shares) and his wife and children own non-voting shares comprising 90% of the total issued shares, but they are all on the board of directors, is trading by such a corporation indirect trading by the insider? Also, is the trading to be reported 100% of the trades, or only a portion equal to the percentage interest of the insider in the corporation?

Sincerely,

Carl Jonsson