



19 March 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  
Manager and Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2

Dear Noreen Bent,

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

INK Research Corp. (INK) is pleased to have the opportunity to comment on the proposed changes to insider reporting requirements across Canada. We are an independent information firm that is followed primarily by individual investors and niche investment funds. These types of investors are generally small players individually, but as group probably make up a significant number of market participants on any given day. While most of our end-users are from Canada, many are from the United States and Europe. Therefore, we believe it is important that we provide our perspective on the proposed changes.

In this letter, we first address specific issues that have come to our attention relating to the proposed instrument NI 55-104 and the companion policy that we believe are critical for maintaining and enhancing the insider reporting process in Canada. We then provide comments on remaining issues identified in Appendix A of the CSA Staff Bulletin.

In general, INK believes that Canadian regulators have made significant and impressive progress in developing Canada's insider reporting regime over the past 7 years. We are further encouraged that regulators are continuing to focus their attention on ensuring our reporting system remains modern and transparent, particularly in relation to competing capital markets around the world. Before drilling down to the specific issues, we would note that there are two key broad matters that should be addressed by regulators.

First is the clouding of insider reporting transparency by having most information reported on SEDI while some other information is allowed to go on SEDAR. This is a major problem for all but the most sophisticated and resource-rich investors. Insider reporting should be on SEDI with no exceptions. Investors need one stop shopping as they need to be certain that they have reviewed all relevant insider data when going to SEDI. It is not fair to have some unsuspecting foreign or retail investor being caught off guard because they thought they had reviewed all insider data only to find out subsequently that there was an alternative report on another data base. Secondly, we are concerned about the lack of penalties available to regulators to punish late filers who have abused the system for personal or corporate gain. Heavy penalties must be in the regulatory tool kit.

#### Narrowing the Definition of Insiders

INK very much supports the direction taken to streamline the definition of insiders as there are too many filers currently who likely are not in a position to have access to material issuer information. This generates white noise in the reporting system. We also support the outcomes based approach and the definitions in 3.2 (1) of the proposed NI 55-10 instrument with one exception and one reservation.

In terms of the exception, we recommend replacing "and" with "or" in 3.2 (1) (i)(i). For example, an administrative assistant of the CEO may own a large amount of issuer stock, have access to material information, but not exercise significant power over the business. A person in this situation may not be viewed as an insider under the proposed language even though he or she probably should be one. We suspect that failure to make this "small" change will lead to some embarrassing problems down the road. We believe that 3.2 (1)(i) (i) and (ii) can be a very effective section if this proposed change is made.

In terms our one reservation, it concerns 3.2 (1) g and the related discussion in the companion policy with respect to issuers. We have come across at least one instance where there is some ambiguity by an issuer as to whether or not they need to file as an insider on SEDI when buying back shares through a normal course bid (NCIB). While we believe the language of Part 7 in the proposed instrument and in 7.2 of the companion policy indicate the requirement for issuers to file an insider report in relation to an NCIB on SEDI during the prescribed time period, we are somewhat concerned about the phrase "for so long as it continues to hold that security" in 3.2 (1) g and in the companion policy. This language could lead to ambiguity among issuers as to whether or not they need not file an insider report on SEDI if shares are immediately bought and cancelled during an NCIB. We suggest removing that language if possible or adding clear language to 3.2 (1) g to include the fact that all NCIB transactions are subject to insider reporting. We would oppose any initiative to move NCIB reporting onto SEDAR.

#### Exemption for Option Grants/Alternative Reporting

INK strongly opposes the alternative monthly report for options grants. We understand the rationale for a SEDAR filing. However, the granting of options can send an important signal particularly in smaller companies. Therefore, it is not acceptable to have this information tucked away in an alternative report on SEDAR and treated like a general meeting document.

We are not opposed to an issuer filing, but it should be on SEDI. However, even if the filing is made by the issuer on SEDI, the grants should still show up in the account of the insider. Otherwise, we believe monitoring insider options could turn out to be challenging and such an outcome will not be consistent with promoting transparency.

More generally and importantly, INK highly recommends that SEDAR not be used as an alternative for reporting insider information (Management Information Circulars should nevertheless still contain insider holdings and other information). More to the point, INK opposes the alternative reporting system, specifically NI 62-103 part 4 and the associated exemption from the insider reporting requirement found later on in the document. All 10% holders should be required to file on SEDI and we call for the elimination of the NI 62-103 part 4 exemption for eligible institutional investors.

Having a dual reporting structure is costly and confusing for investors. It is like requiring a movie-goer to switch theatres before the end of the show. This dual depository system does not promote transparency. Instead, it provides an advantage to large domestic investors who have the resources to monitor the flood of mid-month alternative report filings on SEDAR. While the interests of eligible fund holders and pension plan participants are important, the interest of transparency for all global

investors is paramount. The alternative reporting exemption is too generous and it is small investors who pay the biggest price.

Moreover, considering that some of the funds taking advantage of this exemption are only open to the wealthy or cater to a shrinking segment of society that has membership in a defined benefit plan, we view the NI 62-103 part 4 and its related exemption as regressive. This exemption needs to be rescinded with haste.

### Reportable Transactions

INK strongly supports the efforts made to capture contractual, derivative and over-the-counter arrangements that have an impact on the state of beneficial ownership of securities by an insider. We would specifically recommend that regulators ensure that this new section is written and administered in a way that requires insiders to disclose purchases or sales of securities using margin type arrangements with brokerages. During the fall 2008 market meltdown, some problems with margin arrangements became apparent. A number of senior insiders reported securities sales which were margin driven. However, most investors did not know this at the time. Although some insiders may have noted the existence of margin arrangements in the notes on SEDI, these notes are not available to firms such as INK and they are not visible as a default setting on SEDI.

Instead, an upfront disclosure of the margin arrangement should be made at the time of the securities purchase or sale. We suggest considering whether a new SEDI code should be implemented that identifies a "public market margined acquisition/disposition". This would identify at the time of purchase or sale that the insider transacted on margin. There may be better solutions to tackle this problem, but the issue needs to be addressed.

INK supports the concept that insiders should *not* be discouraged from using margin type arrangements as they can promote share ownership among key officers and directors. This is tricky balancing act, but an important one.

### Shortened Insider Reporting Filing Time

INK strongly supports moving to a 5 day reporting time horizon. This is particularly important given the introduction of marker data so that investors can identify buyers and sellers on a timely basis.

### Late Filing Fees

Although INK is pleased to see that the issue dealing with late filers is on the agenda and that a late filer may be reported in the Management Information Circular, INK is disappointed that regulators are not addressing the issue of penalties now. Fortunately, the vast majority of insiders in our market play

by the rules. However, the lack of a strong deterrence for failing to file is a weak link in the current reporting regime.

INK urges regulators to implement strong, uniform penalties for insiders who appear to have deliberately filed late or did not file at all until discovered. Regulators will need a wide range of potential penalties to deal with the circumstances on a case-by-case basis. INK is not interested in proposing to implement heavy fines on small companies or insiders that through administrative oversight fail to file or file late on an isolated basis. What we are most concerned about is the insider who uses complex arrangements to avoid filing and detection. In such cases, regulators must have at their disposal very harsh penalties. This would not only promote justice, but also raise the stakes for those considering undertaking nefarious activities such as hidden ownership empty and parked voting strategies and, perhaps most importantly, nominee offshore accounts.

Our views on other issues raised in Appendix A in the CSA Staff Notice are as follows:

#### Definition of "major subsidiary"

We agree with the proposed change, assuming, however, that if a person plays a dual role in an organization where they are a director or officer of non-reporting subsidiary, but also have access to material information of the issuer that they would be captured by 3.2 (1) (i) (i).

This highlights the need for the proposed change to the language of 3.2 (1) (i) (i) discussed above.

#### Definition of "significant shareholder"

We believe that a significant insider should be any holder of 10% or more of the votes eligible to be cast at a meeting of shareholders. The type or nature of the securities to obtain the voting power should not be relevant. It is the voting power that is relevant.

#### Concept of "post-conversion beneficial ownership"

We support the concept but understand there are out-of-the money circumstances where post-conversion is unlikely. Perhaps an exemption can be granted on a case-by case basis once regulators can adopt a framework for identifying a threshold.

Aside from the out-of-the money circumstance, INK strongly opposes any exemption from this concept for eligible institutional investors as defined by National Instrument 62-103.

Report by Certain Designated Insiders for Certain Historical Transactions

INK supports the initiative but opposes the reporting of these transactions on SEDAR. The reporting of these transactions should be on SEDI so that there is one uniform source that investors can turn to for insider data and be confident that they are viewing all publicly disclosed insider trades in an issuer.

We appreciate your consideration of comments and please contact us should you need any clarification of our views expressed.

Sincerely,

Ted Dixon, CFA  
CEO