Direct Dial: (514) 847-4829
cdube@ogilvyrenault.com

Montréal, March 18, 2009

BY EMAIL

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

To the attention of:

Ms. Noreen Bent
Manager and Senior Legal Counsel,
Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
e-mail: nbent@bcsc.bc.ca

M[e] Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22[e] étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

RE: Proposed National Instrument 55-104 - Insider Reporting Requirements and Exemptions

This letter is submitted in response to the Notice and Request for Comment made by the Canadian Securities Administrators (the "CSA") on proposed National Instrument 55-104 – *Insider Reporting Requirements and Exemptions* (the "Proposed Rule"). It reflects comments generated from capital market participants having a combined market capitalization of more than $40 billion. We appreciate the opportunity to comment on this important initiative on insider reporting disclosure. We have the following comments on the Proposed Rule.

General

We fully support the proposed consolidation of insider reporting requirements and exemptions in a single national instrument and we particularly support the narrowing of the obligations to a core group of insiders who have access to material undisclosed information.

We are of the view that the period to file insider reports should not be shorter than 5 business, rather than calendar days. In addition, compensation arrangements that entitle insiders solely to cash payments based on the value or growth in value of the reporting issuer's shares over a specified period of time, such as restricted share units ("**RSUs**") and deferred share units ("**DSUs**"), should not be subject to the insider reporting requirements as such compensation arrangements are in fact tax-deferred bonuses and are required to be fully disclosed under Form 51-102F6. Cash-settled compensation arrangements such as DSUs and SARs should therefore be specifically excluded from the definition of "related financial instrument". The principal objective of insider reporting should be to discourage insider trading. Compensation arrangements such as DSUs and RSUs are generally not transferable and, as such, there is no possibility of market manipulation. Finally, we disagree with the proposal to disclose late filings in an issuer's information circular for the reasons more fully set forth herein.

As a general comment, we would urge the CSA to implement on a timely basis a review of SEDI filing procedures with a view to ensuring that SEDI becomes more user-friendly. Many late insider report filings are due to problems encountered by insiders using SEDI. We are of the view that improving SEDI filing procedures must be a priority.

Specific Requests for Comments

Our comments below generally follow the order set forth in the CSA request for comments.

1) Definition of "reporting insider"

We are of the view that the reporting requirements should be limited to persons who have access to material undisclosed information and who exercise or have the ability to exercise significant influence over the reporting issuer as set out in Subsection 3.2 (1)(i) of the Proposed Rule (the "**knowledge criteria**"). While specifically designating certain prescribed persons as "reporting insiders" simplifies the insider identification process, the proposed definition of "reporting insider" is, in our view, too broadly drafted and will catch persons (namely executives and directors of major subsidiaries and of significant shareholders) who could not otherwise meet the knowledge criteria. For example, a director of a major subsidiary in a foreign country may be an appointed representative and not meet the knowledge criteria but would be deemed a "reporting insider" under Section 3.2 of the Proposed Rule. We are of the view that executives and directors of major subsidiaries and of significant shareholders should not be deemed "reporting insiders" pursuant to Section 3.2 of the Proposed Rule and automatically subject to insider reporting requirements. If they do not have access to undisclosed material information nor any policy making power in respect of the reporting issuer they should not be required to report their trades. Section 9.2 of the Companion Policy of the Proposed Rule indicates that the CSA will consider applications for exemptive relief under such circumstances; however, we would suggest that a statutory exemption for

executives and directors of major subsidiaries and of significant shareholders who would not meet the knowledge criteria in the Proposed Rule would be more efficient. Such statutory exemption could replace the general exemption provided in Section 9.3 of the Proposed Rule and should cover a broader group of insiders.

2) Definition of "major subsidiary"

Directors and officers of subsidiaries of reporting issuers are already "insiders" under the securities legislation applicable in all jurisdictions. Subject to our comment under 1) above, Subsections 3.2(1)(a) and (b) of the Proposed Rule would limit the insider reporting requirements applicable to major subsidiaries only to directors and the CEO, COO and CFO of major subsidiaries. For those situations, a threshold of 30% of consolidated assets or revenues would be reasonable.

3) Reporting Deadline

We are of the view that accelerating the reporting deadline from 10 days to 5 calendar days would significantly increase late filings by reporting insiders. Some participants have indicated that they have had problems in the past collecting information on a timely basis from insiders, particularly during holiday periods. We are of the view that 5 business days would be an appropriate reporting deadline, would be the same as that of the U.K. and would balance the need for timely information to be released in the market with the administrative burden of filing insider reports.

We agree that the current 10 day deadline for the filing of an initial report should be retained. That timeline is particularly important for new insiders to get familiar with SEDI. The 10-day initial reporting deadline is also appropriate in the context of IPOs for which closing often occurs several days after the issuance of a final prospectus receipt. In such situations, insiders are not in a position to know exactly the number of securities that they have to report (especially if an over-allotment option is exercised) before the closing date.

4) Definition of "significant shareholder"

We are of the view that the significant shareholder determination should be based on "any class of the issuer's outstanding voting securities". This information is currently required in a reporting issuer's information circular by virtue of item 6 of Form 51-102F5. The CSA should, however, clarify that, when determining securityholding ownership, an insider is entitled to rely upon the most recent information provided by the reporting issuer in its continuous disclosure documents, as permitted by section 2.1 of National Instrument 62-103 for the early warning reporting requirements.

We are of the view that different thresholds should continue to apply to the insider reporting and the early warning requirements. The principal objective of the early warning system is to alert the market of potentially significant transactions. The insider reporting requirements serve different functions.

5) Concept of "post-conversion beneficial ownership"

We support the harmonization of the insider reporting regime with the early warning regime (except for the ± 2% thresholds). It should be clarified that the calculation basis is the same for both regimes.

In those instances where the number of shares issuable upon conversion was not fixed at the time of the issuance of the convertible securities insider reporting may be difficult. In an early warning report, an explanation of this fact can be made. If possible, the ability to explain the conversion feature should be added to the form of insider report without having to disclose a specific number of shares.

Finally, we are of the view that no exemption for "out of the money" convertible securities should be provided since this would make monitoring the reporting requirement more complicated.

We are of the view that the existing exemption from the insider reporting requirement which is available in the alternative regime for eligible institutional investors pursuant to section 9.1 of National Instrument 62-103 should be maintained however, amendments should be made to reflect the appropriate requirements of the Proposed Rule.

6) Issuer grant report

We support the introduction of an issuer grant report and the corresponding exemption in the Proposed Rule. We believe that this will address late filing problems which may result from the unintentional failure of an issuer to inform insiders of an option grant on a timely basis where the vesting date is far in the future.

We understand that the CSA proposes to extend the limitation contained in Subsection 5.2 (3) of NI 55-101 relating to the exemption for automatic securities purchase plans to the acquisition of stock options granted to executive officers and directors. Reporting issuers would have to file a notice on SEDAR disclosing the existence and material terms of the grant to rely on the exemption. We understand that the rationale of the proposed exemption for issuer grants of securities and related financial instruments is based on the fact that the decision to make the grants originates with the issuer and there is no discrete investment decision made by insiders under such circumstances. We are, therefore, of the view that the issuer grant exemption should be treated in the same manner as the exemption for automatic securities purchase plans contained in the Proposed Rule, without limitation for those insiders who do not participate in the decision to grant options or other securities.

We are of the view that all the information relating to insider reporting should be available in a single place. SEDI should remain the Canadian website where market participants can get information about transactions made by insiders. Should the information be split between SEDI and SEDAR, market participants risk being confused and the information that is retrieved from either site will be potentially incomplete.

The annual filing approach for issuer grants of securities is consistent with the exemption for automatic securities purchase plans and the reporting deadline is, in our view, appropriate.

We think that there is no need to reduce the 90 days filing deadline for filing annual insider reports, as such, grants of securities do not involve transactions or investment decisions by insiders.

7) Report by certain designated insiders for certain historical transactions

SEDAR contains valuable information on market transactions and continuous disclosure of issuers. As set out above, insider reporting information should be filed in one place (SEDI) to avoid fragmentation. Difficulties in filing reports about historical transactions should not be addressed by imposing late filing fees, as the information contained in such reports is not of the type needed to be disclosed in a timely manner. As discussed above, we urge the CSA to accelerate the proposed changes to SEDI in order to simply filing procedures.

8) Disclosure in shareholder meeting information circulars

As indicated in item 10.2 of Form 51-102F2 and item 7.2. of Form 51-102F5, a fee that is applied on the late filing of an insider report is not a "penalty or sanction". Therefore we disagree with the proposal to disclose such late filings in an issuer's information circular. However, if the CSA maintains its proposal to require disclosure of late filing fees, we think that such disclosure should be made exclusively in the Annual Information Form since such information would cover directors and executive officers instead of only directors. Moreover, we think that disclosure should apply only to "repeat offenders" as the disclosure ultimately penalizes the insider. This increased penalty should therefore not apply to a "one-time offender".

9) Other comments

The concept of "reporting insider" reflected in the Proposed Rule is repetitive in certain instances. For example, Subsection 3.2 (2) of the Proposed Rule states that a reference to "significant shareholder" includes "significant shareholder based on post-conversion beneficial ownership". Subsection 1.2 (1) (a) of the Proposed Rule designates significant shareholders based on post-conversion as reporting insiders, which designation is applicable to all provisions of the Proposed Rule. In addition, "management companies" are designated or determined to be insiders pursuant to Subsection 1.2 (1) (b) and are also specifically mentioned in Subsection 3.2 (1) (e) of the Proposed Rule. In addition, Subsection 3.2 (1) (h) indicates that a person or company designated or determined to be an insider under Subsection 1.2 (1) of the Proposed Rule are reporting insiders.

Conclusion

The Proposed Rule does not indicate how the CSA intends to implement the new regime. We would suggest a transitional period of 6 months in order to make sure that insiders will be familiar with their new insider reporting requirements. The transitional period would be particularly appropriate if the CSA is undertaking a modernization of SEDI.

* * * * * *

If you have any questions concerning these comments, please contact Christine Dubé at (514) 847-4829 (direct line) or by e-mail at cdube@ogilvyrenault.com or Tracey Kernahan at (416) 216-2045 (direct line) or by e-mail at tkernahan@ogilvyrenault.com.

Yours very truly,

Ogilvy Renault LLP

Ogilvy Renault LLP