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March 19, 2009

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services 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

DELIVERED TO:

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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Dears Sirs and Mesdames:

Re: CSA Notice and Request for Comment – Proposed NI 55-104 *Insider Reporting Requirements and Exemptions*, Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* and Related Consequential Exemptions

We are pleased to provide the Canadian Securities Administrators (the CSA) with comments on the above proposal.

These comments are those of lawyers in BLG's Securities & Capital Markets practice group and do not necessarily represent the views of individual lawyers, the firm or our clients.

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Definition of Reporting Insider

We agree that the insider reporting requirements should be limited to insiders who satisfy the criteria of routine access to material undisclosed information and significant influence over the reporting issuer. Eliminating the requirement for insiders that do not meet these criteria will significantly improve the insider reporting system by reducing compliance costs and minimizing the number of reports that do not contain information of value to the market.

However, the inclusion of significant shareholders of the reporting issuer in the definition of reporting insider may, in many cases, be over inclusive. Depending upon the reporting issuer's shareholder base, a 10% ownership interest may not provide a shareholder with any access to material undisclosed information of, or significant influence over, the reporting issuer. We suggest that the CSA consider including only those significant shareholders who satisfy the criteria of access and influence as reporting insiders. Alternatively, the CSA should consider expanding the exemption in section 9.3 so that it applies to the significant shareholder itself, as well as its officers and directors (or those of its subsidiaries).

Definition of Significant Shareholder

We do not support the expansion of the definition of significant shareholder to include those holding 10% of the voting rights attached to any class of the issuer's outstanding voting securities instead of all of the issuer's outstanding securities. As noted above, control over 10% of the votes may not provide a shareholder with meaningful access to material undisclosed information of, or influence over, a reporting issuer. The proposed change would be inconsistent with the rationale of the reporting insider concept, since it expands the number of potential reporting insiders without reference to access or influence. Furthermore, depending on an issuer's capital structure, the proposed change could include shareholders that hold an inconsequential percentage of votes of a reporting issuer on a fully diluted basis.

Given that insider reporting and the early warning system have different purposes, we do not see any inconsistency in maintaining the current difference in the reporting threshold.

Concept of "post conversion beneficial ownership"

Harmonizing the determination of beneficial ownership for the purposes insider reporting with deemed beneficial ownership in the context of the take-over bid and early warning requirements may lead to unnecessary reporting. Although the anti-avoidance rationale applies equally to insider reporting, the specific mechanisms used in the take-over bid and early-warning provisions may not be appropriate in the context of insider reporting.

The take-over bid and early warning provisions contemplate a partially diluted calculation with only those securities that may be obtained by the acquirer within 60 days deemed to be outstanding. Securities that may be obtained by other parties within the same time period are not considered to be outstanding. Therefore, the calculation overstates the impact of the '60-day convertibles' on the post conversion beneficial ownership of any specific security holder if there are other convertible securities outstanding.

For example, if an issuer's capital structure consists of common shares and debt that is convertible into an equal number of common shares and the convertible debt is held in equal amounts by 7 debt holders, each debt holder would have a post-conversion beneficial ownership of 12.5% and would be a reporting insider based solely on holding convertible debt under proposed NI 55-104. However, each holder would have the ability to obtain only approximately 7.1% of the shares on a fully diluted basis. Since it is more common for convertible securities to

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be held by multiple investors, we suggest that the CSA consider allowing security holders to calculate post-conversion beneficial ownership on a fully diluted basis where there is reasonably reliable information as to the outstanding convertible securities of an issuer.

We also suggest that the CSA consider excluding securities that cannot be acquired on commercially reasonable terms, such as those underlying out of the money options. We submit that there is no reason to assume that the right to acquire securities for more than the market price would result in gaining greater access to, or influence over, the issuer.

The inclusion of such securities for the purpose of deemed beneficial ownership in the context of the take-over bid and early warning provisions may be justified by a concern that a party may choose to acquire securities on economically unfavourable terms in order to obtain control. However, this concern is not relevant to whether such a party should be required to file insider reports.

Consequential Amendment to the Early Warning Regime

We disagree with the proposal to amend National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* to exclude the supplemental insider reporting obligation from the scope of the insider reporting exemption in NI 62-103. There does appear to be any policy rationale to support a higher standard of reporting by eligible institutional investors for the supplemental insider reporting requirement than for the primary insider reporting requirement. We do not see any value in requiring eligible institutional investors to report all transactions under the supplemental insider reporting obligation on SEDI within 5 days, while allowing them to report aggregate changes in direct ownership over the 2.5% thresholds on a monthly basis on SEDAR under the alternative monthly reporting system.

Any concern that the changes in indirect ownership of, or control over, securities of a reporting issuer though derivatives may not be captured by the definition of "securityholding percentage" in NI 62-103, would be better addressed through conditions to the insider reporting exemption. The exemption could be made conditional upon the eligible institutional investor treating significant changes in its economic exposure to a reporting issuer through derivatives as a change in a material fact for the purposes of the early warning requirements. The magnitude of the change that should be treated as a change in a material fact should be similar to the reporting thresholds in section 4.5 of NI 62-103. The required report should be filed within 10 days after the end of the month in which the change occurred.

We would be pleased to discuss any of these comments with you in greater detail. Please contact Alfred Page at (416) 367-4020 or David Surat at (416) 367-6195 if you require any additional clarification regarding our comments.

Yours very truly,

BORDEN LADNER GERVAIS LLP

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