Chapter 6

Request for Comments

6.1.1 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 Amendments

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

1. Purpose of notice

The Canadian Securities Administrators (the CSA or we) are publishing for a 90-day comment period the following proposed materials:

- National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the Proposed Instrument);
- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (the Proposed Policy);
- Consequential amendments to Multilateral Instrument 11-102 *Passport System*;
- Consequential amendments to National Instrument 14-101 *Definitions*;
- Consequential amendments to Form 51-102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations*; and
- Consequential amendments to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues.*

The Proposed Instrument, the Proposed Policy and the related consequential amendments are collectively referred to as the Proposed Materials.

The Proposed Materials would replace the following instruments (the Current Materials) currently in effect:

- National Instrument 55-101 *Insider Reporting Exemptions* (NI 55-101);
- Companion Policy 55-101CP *Insider Reporting Exemptions*;
- Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (MI 55-103);
- Companion Policy 55-103CP *Insider Reporting of Certain Derivative Transactions (Equity Monetization)*; and
- British Columbia Instrument 55-506 *Exemption from insider reporting requirements for certain derivative transactions*.

We are publishing with this Notice the Proposed Materials and the repeal instruments for the Current Materials. You can also find the Proposed Materials and repeal instruments on the websites of many CSA members.

Certain jurisdictions may include additional local information in Appendix L.

2. Substance and purpose of the Proposed Instrument and the Proposed Policy

The Proposed Instrument will set out the main insider reporting requirements and exemptions for insiders of reporting issuers. The exception is Ontario, where the main insider reporting requirements will remain in the *Securities Act* (Ontario). Despite this difference, the substance of the requirements for insider reporting will be the same across the CSA jurisdictions.

The Proposed Policy provides guidance as to how we would interpret or apply certain provisions of the Proposed Instrument.

3. Summary of the Proposed Instrument

We are publishing the Proposed Materials for comment as part of an initiative to modernize, harmonize and streamline insider reporting in Canada. The insider reporting requirements and exemptions are currently set out in a variety of statutes, rules and regulations in each jurisdiction. We are proposing to consolidate the main insider reporting requirements and exemptions in a single national instrument to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance.

We are also proposing changes to the insider reporting regime that we think will improve its effectiveness. Specifically, we are proposing to

- significantly reduce the number of persons required to file insider reports;
- accelerate the filing deadline for insider reports from 10 calendar days to five calendar days;
- simplify and make more consistent the reporting requirements for stock-based compensation arrangements;
- facilitate insider reporting of stock-based compensation arrangements by allowing issuers to file an "issuer grant report" similar to the current "issuer event report"; and
- require an issuer to disclose in its information circular any late filings by its insiders.

4. Prior request for comment

We have previously requested comment about some of the proposals reflected in the Proposed Materials. In October 2006, we published a Notice and Request for Comment relating to amendments to NI 55-101. As part of that Notice, we outlined at a high level proposals for future amendments to Canadian insider reporting requirements, including amendments that would consolidate the insider reporting requirements and exemptions in a single instrument, refocus the insider reporting requirements on a smaller group of insiders and accelerate the filing deadlines. These proposals were referred to as the "Phase 2 amendments".

As described in the summary of comments and responses included with the Notice of Amendments to NI 55-101, published in June 2007, we generally received positive comments about our proposals for the Phase 2 amendments. These proposals are now reflected in the Proposed Materials.

5. Why are we proposing changes to the current insider reporting regime?

The insider reporting requirements serve a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.

In connection with our proposals for the Phase 2 amendments, we conducted research that compares our current insider reporting requirements with those in other countries.

Based on the results of our research, we have reached the following conclusions:

1. Canadian insider reporting requirements are not fully harmonized. In addition, the main requirements and exemptions are situated in various Acts, regulations and rules across the CSA. This can be confusing for issuers and insiders, who may find it difficult to understand and comply with their obligations, and other market participants, who may find it difficult to analyze the information that is reported. We think it would be helpful to market participants to consolidate the main insider reporting requirements and exemptions in a single instrument.

2. The Canadian insider reporting regime requires an unduly broad class of persons to file insider reports. This is particularly apparent in the case of larger issuers with many subsidiaries and affiliates. In contrast, the insider reporting requirements of the U.S. and the U.K. generally impose an insider reporting requirement on a much narrower class of

persons. We propose to narrow the focus of the insider reporting requirement to a core group of insiders with the greatest access to material undisclosed information and the greatest influence over the reporting issuer. We propose to achieve this by introducing a new concept of a "reporting insider" and by amending the definition of "major subsidiary".

3. The period allowed for filing insider reports (generally 10 days from the date of the transaction) is too long. In contrast, the insider reporting filing deadlines in the U.S. (generally two-business days from the date of the transaction) and the U.K. (generally within five business days from the date of the transaction) require substantially faster reporting. We are proposing to accelerate the filing deadline from 10 calendar days to five calendar days to make this important information available to the market sooner.

4. The insider reporting requirements relating to different types of stock-based compensation arrangements, such as stock options, phantom stock, stock appreciation rights (SARs), restricted share units (RSUs), deferred share units (DSUs), and similar instruments, are inconsistent and confusing. In contrast, the insider reporting requirements in the U.S. for reporting these instruments are relatively clear. We think we should simplify the insider reporting requirements for such instruments and make them more consistent. In addition, the inconsistent regulatory treatment of stock-based compensation arrangements has been highlighted by the recent controversy involving stock option back-dating.

5. Some insiders have experienced difficulties in filing insider reports by the required deadline about transactions that originate at the issuer level, such as a grant of stock options by the issuer to insiders, since the issuer may not have provided the insiders with the necessary information in a timely manner. We propose to introduce an exemption that would permit an issuer to file on SEDAR an "issuer grant report". If the issuer files an issuer grant report, the insider recipients of this grant would then be exempt from the requirement to file an insider report about the grant by the ordinary filing deadline and could instead file an alternative report on an annual basis.

6. Our approach to dealing with late filing of insider reports is not harmonized. For example, Alberta and Quebec publish a list of late filers, whereas other jurisdictions do not. Our proposals to respond to these concerns include an issuer disclosure requirement, similar to current U.S. requirements, that would require an issuer to disclose in its circular whether any of its insiders have made late filings in the previous year. The effective date proposed for the issuer disclosure requirement is December 31, 2010, allowing for a transition period.

6. Outcomes-based response to these concerns

The Proposed Instrument reflects an outcomes-based approach to insider reporting and ties the requirement to file insider reports to the fundamental policy rationales for the insider reporting requirement. The Proposed Instrument responds to the following questions:

- Who should file insider reports?
- What insider transactions should be reported?
- When should insider transactions be reported?

a) The "reporting insider" concept

Although securities legislation generally imposes an insider reporting requirement on all persons who are "insiders", we have provided a variety of exemptions for insiders who are not significant shareholders, do not exercise an executive officer or director function and do not routinely have access to material undisclosed information about the reporting issuer prior to general disclosure. These exemptions are situated in various rules and regulations adopted in each jurisdiction in Canada.

The insider reporting regime prescribed by the Proposed Instrument replaces this broad "catch and release" approach with a more principled approach that focuses the reporting requirement on a narrower, core group of insiders. The core group includes significant shareholders of the issuer and other insiders who satisfy both of the following criteria:

(i) the insider in the ordinary course has access to material undisclosed information concerning the reporting issuer prior to general disclosure; and

(ii) the insider, directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer.

This approach is reflected in the new definition of "reporting insider". The reporting insider definition comprises:

(i) a list of persons or companies that includes significant shareholders plus other insiders we think generally satisfy both of the criteria, and

(ii) a "basket" provision that explicitly cites these two criteria.

The insider reporting regime currently includes exemptions that relieve from the reporting requirement persons who do not meet the first of these criteria, that is, persons who do not have routine access to material undisclosed information. Based on our review, we have concluded that we should further narrow the focus of the insider reporting regime to persons who satisfy both this criterion and the criterion of having significant influence over the reporting issuer. We think that narrowing the focus of the insider reporting regime to a core group of senior insiders who have the greatest access to material undisclosed information, together with accelerated reporting, would have an enhanced deterrent effect on the most senior insiders and would result in faster dissemination of the most important information to the market.

In addition, the Proposed Instrument will also address the concern that certain persons who satisfy these two criteria may not currently be required to file insider reports because they may not technically be insiders. For example, as explained in section 6.4 of National Policy 41-201 *Income Trusts and Other Indirect Offerings*, we are concerned that certain persons who would be insiders of an operating entity underlying an income trust if the operating entity were a reporting issuer may not, for technical reasons, be insiders of the income trust. This concern would apply to, for example, directors and officers of a management company that provides management services to the operating entity. Although we think that such persons will generally come within the definition of "insider" based on the definition of "officer" (which includes persons who perform a similar function to an officer), we generally obtain undertakings from an income trust to address this concern.

The Proposed Instrument addresses these concerns by expressly designating certain classes of persons who satisfy these two criteria to be "insiders" and including them within the definition of "reporting insider".

Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.

b) Reportable transactions

Under Part 3 of the Proposed Instrument, reporting insiders are generally required to file insider reports disclosing the reporting insider's

(i) beneficial ownership of, or control or direction over, directly or indirectly, securities of the reporting issuer, and

(ii) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

These are the primary insider reporting requirements.

Part 4 of the Proposed Instrument contains a supplemental insider reporting requirement relating to certain agreements, arrangements or understandings that may not technically trigger the above tests for reporting under Part 3 but that otherwise satisfy the policy rationale for insider reporting.

The supplemental insider reporting requirement is consistent with the insider reporting requirement for derivatives that previously existed under MI 55-103. However, because Part 3 of the Proposed Instrument requires insiders, as part of the primary insider reporting requirement, to file insider reports about transactions involving "related financial instruments", most transactions that were previously subject to a reporting requirement under MI 55-103 will be subject to the insider reporting requirement under Part 3 of the Proposed Instrument.

c) Deadline for filing

We are proposing to accelerate the deadline for filing insider reports from 10 calendar days to five calendar days after a trade because we think the market would benefit from more timely dissemination of information relating to insider transactions. Accelerating the reporting deadline should also address concerns about improper activities involving stock options and similar equity-based instruments, including stock option backdating, option repricing, and the opportunistic timing of option grants. More timely disclosure of option grants and public scrutiny of such disclosure would generally limit opportunities for insiders to engage in improper dating practices.

We propose to retain the current ten day timeline for filing initial reports to accommodate new filers and the time associated with creating new insider profiles on the System for Electronic Disclosure by Insiders (SEDI).

7. Anticipated Impact on Stakeholders

Although reporting insiders will become subject to an accelerated filing deadline, many other insiders will benefit as they will no longer have to file insider reports. Reporting issuers that currently file insider reports on behalf of their insiders will benefit through reduced compliance costs due to the smaller class of reporting insiders. Investors and other market participants who use the insider reporting system will benefit from a simpler, more focused, and more timely insider reporting system.

The insider reporting requirement will focus on a more senior, core group of insiders. This should result in an enhanced deterrent and signalling effect (the key reasons for insider reporting) on the core group of senior insiders who have the greatest access to material undisclosed information and who will continue to report. The information from this core group of insiders will not be obscured, as at present, by a large volume of insider reports filed by persons who, although statutory insiders with some access to material undisclosed information, are outside this core group.

8. Impact on SEDI

The Proposed Materials focus on the substantive legal insider reporting requirements rather than the procedural requirements relating to the electronic filing of insider reports. We are not proposing any amendments to National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102) as part of this initiative.

However, we anticipate that several of the proposed substantive changes to our insider reporting regime would help address concerns raised by issuers and insiders in relation to SEDI.

For example, reducing the number of persons required to file insider reports would eliminate the reporting burden for those insiders who are no longer required to report. Similarly, we understand that some insiders have experienced difficulties reporting on time transactions that originate at the issuer level, such as a grant of stock options by the issuer to insiders, because of delays in the issuer providing the necessary information. Under the Proposed Instrument, if the issuer files an issuer grant report, the insider recipients of the option grant would be permitted to file an alternative report on an annual basis.

Finally, reducing the number of insiders required to report and introducing a requirement that issuers disclose late insider filings in their circulars will create additional incentives for issuers to assist their insiders with complying with their insider reporting requirements.

9. Consequential amendments to NI 14-101 and NI 62-103

We are proposing an amendment to the definition of "insider reporting requirement" in National Instrument 14-101 *Definitions* to harmonize this definition with the corresponding definition in NI 55-104 and to update the definition so that it also refers to the insider reporting requirements applicable to derivative transactions and the requirement to file an insider profile under NI 55-102.

As a result of this amendment to the definition of "insider reporting requirement" in NI 14-101, certain consequential amendments to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) are necessary. Under Part 9 of NI 62-103, an eligible institutional investor is exempt from the insider reporting requirement for a reporting issuer if the eligible institutional investor complies with the alternative monthly reporting requirements under Part 4 of NI 62-103 and complies with the other conditions in Part 9 of NI 62-103. As a result of the current definition of "insider reporting requirement" in NI 14-101, the exemption from the insider reporting requirements in Part 9 of NI 62-103 is currently an exemption only from the requirement to file insider reports relating to the insider's beneficial ownership of, or control or direction over, securities of the reporting issuer. The exemption does not exempt the eligible institutional investor from the requirement to file insider reports about derivative transactions that may affect the investor's publicly disclosed holdings. This is appropriate since a failure to disclose a monetization transaction or a similar derivative transaction may result in the investor's publicly disclosed holdings being misleading.

However, as a result of the amendment to the definition of "insider reporting requirement" in NI 14-101, in the absence of a corresponding amendment to NI 62-103, eligible institutional investors would be exempt from the requirement to file insider reports about derivative transactions under Part 4 of the Proposed Instrument. Accordingly, we are amending Part 9 of NI 62-103 to make it clear that that the insider reporting requirement applicable to derivative transactions in Part 4 of the Proposed Instrument continues to apply to eligible institutional investors.

10. Future Initiatives

a) Late filing fees

As a related initiative, we are also considering ways to harmonize the late filing fees and other consequences of late insider filings. Only some jurisdictions impose late fees and their rates are different. By administrative practice, jurisdictions do not duplicate late fees but the result is that different late fees apply to insiders depending on the location of the issuer's head office.

We are assessing introducing a uniform administrative late fee for late filings regardless of head office jurisdiction. Finally, we are considering whether the list of late filers maintained by certain jurisdictions should become a CSA list. However, we are not proposing any changes relating to late fees or a CSA list of late filers at this time.

b) Issues relating to "hidden ownership" and "empty voting"

We are presently reviewing issues relating to the potential use of derivatives to avoid early warning requirements, insider reporting requirements and similar securities law disclosure requirements that are based on the concepts of beneficial ownership and control or direction.

According to recent studies,[1] a sophisticated investor may be able, through the use of equity swaps or similar derivative arrangements, to accumulate a substantial economic interest in an issuer without public disclosure and then quickly convert this interest into voting securities in time to exercise a vote. (This is referred to as "hidden (morphable) ownership".) The studies also suggest that an investor can, through derivatives or securities borrowing arrangements, acquire voting rights while having no economic stake in the issuer, or even having an economic interest contrary to the issuer's, and seek to influence the outcome of a shareholder vote. (This strategy is referred to as "empty voting"). These studies further suggest that issuers and insiders may be able to employ these strategies to "park" securities with friendly parties to influence how the securities are voted.

The authors of these studies note that these strategies can undermine securities regulatory requirements that are based on the concept of beneficial ownership of voting securities and that a number of jurisdictions, including the United Kingdom, Australia and Switzerland, have recently introduced important disclosure-based reforms in an attempt to deal with the hidden ownership aspect of this problem.

For example, the Financial Services Authority (the FSA) in the UK published a consultation paper in November 2007 relating to proposals to require disclosure of substantial economic interests in a public company held through "contracts for difference" or similar derivative instruments.[2] In July 2008, the FSA announced that it had decided that "a general disclosure regime for long CfD positions (i.e., derivative positions that provide the holder with an economic interest in shares of an issuer) will be implemented as the most effective means of addressing concerns in relation to voting rights and corporate influence. Existing share and CfD holdings, in the same company, should be aggregated for disclosure purposes".[3] The FSA issued a Feedback and Policy Statement in October 2008 and announced that final rules would be made in February 2009 to come into force on September 1, 2009.

We are reviewing the recent reform proposals in other jurisdictions and are considering developing similar proposals for Canada. We are also separately reviewing issues relating to empty voting. We would welcome comment from market participants in Canada on the proposals other jurisdictions are making and on issues relating to empty voting generally.

Appendices

We have set out in Appendix A a set of specific questions for which we are seeking comment.

The full text of the Proposed Instrument and the Proposed Policy are set out in Appendices B and C to this Notice. The text of the various consequential amendments and proposed repeals is set out in Appendices D to K. Certain jurisdictions may include additional information in Appendix L.

Request for Comments

We welcome your general comments on the Proposed Materials.

We also invite comments on specific aspects of the Proposed Instrument. The request for specific comments is located in Appendix A to this Notice.

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1 See, for example, Henry T.C. Hu & Bernard Black, *Equity and Debt Decoupling and Empty Voting: Importance and Extensions*, University of Pennsylvania Law Review, vol 156, no. 3, January 2008 at 625 and various earlier papers cited therein. In the U.S., the question of whether an investor may be considered to have "beneficial ownership" of securities held by a counterparty to an equity swap was recently considered in the decision of the United States District Court for the Southern District of New York in the case *CSX Corporation v. The Children's Investment Fund Management (UK) LLP, et al.*, dated June 11, 2008. In Canada, the Ontario Securities Commission recently had the opportunity to consider similar issues in the Sears Canada decision; see *In the Matter of Sears Canada Inc., Sears Holding Corporation, and SHLD Acquisition Corp. v. Hawkeye Capital Management, LLC, Knott Partners Management, LLC, and Pershing Square Capital Management, L.P.* dated August 8, 2006.

2 See the Financial Services Authority, Disclosure of Contracts for Difference – Consultation and draft Handbook text, available at www.fsa.gov.uk.

3 See the FSA, Contracts for Difference Policy Update, available at www.fsa.gov.uk.

Please submit your comments in writing on or before March 19, 2009. If you are not sending your comments by email, please include a CD ROM containing the submissions (in Windows format, Word).

Address your submission to the following CSA member commissions:

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

Please deliver your comments **only** to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. Comments will be posted to the OSC web-site at www.osc.gov.on.ca.

Questions

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The text of the Proposed Materials follows in Appendices B to G or can be found elsewhere on a CSA member website.

December 18, 2008

APPENDIX A

SPECIFIC REQUESTS FOR COMMENT

In addition to your general comments on the Proposed Materials, we also invite comments on specific aspects of the Proposed Instrument.

Specific aspects of the Proposed Instrument

1. **Definition of "reporting insider"** – We are proposing to limit the reporting requirement to persons who are "reporting insiders". The definition of reporting insider comprises i) a list of persons or companies that we think generally satisfy the criteria of having routine access to material undisclosed information and significant influence over the reporting issuer; and ii) a "basket" provision that explicitly cites these two criteria.

   We invite comments on the following questions:

   a. Do you agree that the reporting requirement should be limited to insiders who satisfy the criteria of routine access to material undisclosed information and significant influence over the reporting issuer? If not, why not? What other criteria should we use in determining who should have to file insider reports?

   b. Do you think the persons or companies enumerated in the definition of "reporting insider" are appropriate? If you think any persons or companies should be added or removed, please explain.

   c. We think that the proposal to limit the reporting requirement to reporting insiders (as currently defined) will significantly reduce the number of insiders who have to file insider reports, particularly for larger issuers with many subsidiaries and affiliates. Do you agree? If possible, please describe the anticipated impact of this change on your organization.

2. **Definition of "major subsidiary"** – We are proposing to amend the percentage thresholds in the definition of "major subsidiary" (currently found in NI 55-101) from 20% of consolidated assets or revenues to 30% in the Proposed Instrument. This would reduce the number of insiders who will be reporting insiders since the definition of reporting insider includes various persons or companies at the major subsidiary level. For example, if we make this change, a director of a subsidiary the assets or revenues of which comprise 25% of the reporting issuer's consolidated assets or revenues on a consolidated basis will no longer be required to file insider reports, since the subsidiary will no longer be a major subsidiary. Do you agree with this change? If not, what should the thresholds be?

3. **Reporting deadline** – We propose to retain the current ten day timeline for filing initial reports to accommodate new filers and the time associated with creating new insider profiles on the System for Electronic Disclosure by Insiders (SEDI). However, we propose to accelerate the reporting deadline from 10 days to five calendar days for subsequent insider reports. Do you agree with this proposal? If not, please explain. Do you think that we should also accelerate the reporting deadline for filing initial reports to 5 calendar days? If not, please explain.

4. **Definition of "significant shareholder"** – We have included in the Proposed Materials a new term – significant shareholder – to refer to a person or company who is an "insider" under securities legislation because the person has beneficial ownership of or control or direction over, or a combination of beneficial ownership of and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 percent of the voting rights attached to all of the issuer's outstanding voting securities. The definition of "significant shareholder" has the same meaning as the corresponding language in the definition of "insider" in securities legislation and has been included in the Proposed Materials to facilitate readability.

   The definition of "significant shareholder" (and the corresponding language in the definition of "insider" in securities legislation) currently refers to "… securities of an issuer carrying more than 10 percent of the voting rights attached to *all* of the issuer's outstanding voting securities". Accordingly, this language does not make a distinction between different classes of voting securities that may have different voting entitlements.

   The current definition may result in situations, particularly in the case of issuers with two-tier (multiple-voting) share structures, where a shareholder may hold a significant proportion of voting securities of a particular class but not be a significant shareholder (or an insider) because of the effect of a separate class of voting securities.

The early warning regime[1] in securities legislation contains a similar disclosure threshold based on beneficial ownership of, or control or direction over voting securities. However, this disclosure threshold refers to "voting … securities of any class of a reporting issuer". Similarly, the principal stockholder concept in section 16(a) of the U.S. *Securities and Exchange Act of 1934* Act refers to "any class of equity security".

We are considering amending the definition of significant shareholder, and seeking legislative amendment of the corresponding provisions in the definition of insider, to replace the language "all of the issuer's outstanding voting securities" with "any class of the issuer's outstanding voting securities". We are not proposing to extend the significant shareholder concept to holders of non-voting equity securities.

We invite comments on the following specific questions:

a. Do you think a significant shareholder should be determined by the shareholder's holdings of a particular class of voting securities, or is the current basis for determining whether a person is a significant shareholder (based on holdings of all of the issuer's outstanding voting securities) appropriate? Please explain.

b. Should different considerations apply to the disclosure thresholds for the purposes of the early warning requirements and the insider reporting requirements?

5. Concept of "post-conversion beneficial ownership" – We have introduced in the Proposed Materials the concept of "significant shareholder based on post-conversion beneficial ownership". This concept, which is based on a similar concept which exists in the early warning regime,[2] is intended to ensure that a person cannot avoid crossing a disclosure threshold (either the early warning disclosure threshold or disclosure obligations associated with insider status) by holding a convertible security rather than the underlying security directly. For example, we think that a person who holds 9.9% of an issuer's common shares together with special warrants convertible into an additional 10% of the issuer's common shares, should have the same reporting requirements as a person who holds 19.9% of the issuer's common shares directly. We invite comments on the following specific questions:

a. Do you agree with harmonizing the insider reporting regime with the early warning regime to address securities convertible within 60 days (60-day convertibles)? If not, why not? Should different considerations apply to the disclosure thresholds for the purposes of the early warning requirements and the insider reporting requirements?

b. Are you aware of any practical difficulties in applying the disclosure test for 60-day convertibles in the early warning system? If yes, please explain.

c. Should we exempt any types of securities or securityholders from this calculation for the purposes of determining insider status? For example, should we exempt convertible securities (such as options) that are significantly "out of the money"? Should we exempt "eligible institutional investors" (as defined in National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues) from this definition for insider reporting purposes?

6. Issuer grant report – As explained in the Notice, we are proposing to introduce a new exemption that would permit an issuer, if it so chose, to file on SEDAR an "issuer grant report" to assist its insiders in their reporting of option grants. If the issuer files an issuer grant report, the insider recipients of this grant would then be exempt from the requirement to file an insider report about the grant by the ordinary filing deadline and could instead file an alternative report on an annual basis.

a. Do you agree with this proposal? Do you think issuers and insiders will find this exemption useful?

b. We are proposing that the issuer grant report be filed on SEDAR, pending necessary changes being made to SEDI. Do you think the information in an issuer grant report is better disclosed through SEDAR or SEDI?

c. The issuer grant report exemption contemplates that reporting insiders who rely on this exemption will make an annual filing, similar to the manner in which reporting insiders currently report acquisitions under an automatic securities purchase plan. Do you agree with this approach? Do you think annual reporting is sufficiently timely?

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1 See section 5.2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and section 102.1 of the *Securities Act* (Ontario).

2 See section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and subsection 90(1) of the *Securities Act* (Ontario).

d. We have proposed that the deadline for filing the annual report under Part 5 and Part 6 should be 90 days from the end of the calendar year. Is this appropriate? Should we accelerate this deadline for filing these annual reports to, for example, 30 days from the end of the calendar year?

7. Report by certain designated insiders for certain historical transactions – Subsections 1.2(2) and (3) of the Proposed Instrument provide that directors and officers of an issuer may, in certain circumstances, be designated or determined to be insiders of a second issuer. Subsection 3.6(1) of the Proposed Instrument requires these individuals to file, within 10 days of being designated or determined to be an insider of the second issuer, insider reports for transactions involving securities of the second issuer for a historical period of up to six months. These provisions are based on the "deemed insider look-back provisions" in securities legislation of some jurisdictions. The purpose of these provisions is to address concerns over directors and officers of a company proposing to acquire a significant interest in another company by "frontrunning" the acquisition through personal purchases of shares of the second company.

We have included these deemed insider look-back provisions in the Proposed Instrument in the interests of harmonizing these provisions. We anticipate that the current deemed insider look-back provisions in securities legislation will be repealed effective on the coming into force of the Proposed Instrument.

Currently, insiders who are required to file insider reports in accordance with the deemed insider look-back provisions must file these reports on SEDI. Under the Proposed Instrument, these individuals will be required to file insider reports in respect of these historical transactions in paper format on SEDAR. We have proposed this change because we understand some insiders have experienced difficulties in filing reports about these historical transactions on SEDI and have inadvertently triggered late fees. In addition, because these filings will commonly arise in a takeover bid context, we think it may be helpful for market participants to view these filings in conjunction with other filings relating to the take-over bid. However, we acknowledge that this may raise a concern about fragmenting an insider's disclosure so that historical transactions are disclosed on SEDAR but that current and future transactions are disclosed on SEDI.

Do you agree with the proposal to require these filings to be made on SEDAR rather than SEDI? Alternatively, do you think these filings should continue to be made on SEDI? Please explain.

8. Disclosure in shareholder meeting information circulars – We are proposing an amendment to Form 51-102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations* that would require an issuer to disclose in its information circular whether any of its insiders have been subject to late filings fees. Do you agree with the proposal to require issuers to disclose whether any of its insiders have been subject to late filings fees? Do you think the disclosure requirement should apply only to insiders who repeatedly incur late filing fees? Please explain.

APPENDIX B

NATIONAL INSTRUMENT 55-104
INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions and interpretation

(1) In this Instrument

"acceptable summary form" means, in relation to the alternative form of insider report described in sections 5.4 and 6.4, an insider report that discloses as a single transaction, with December 31 of the relevant year as the date of the transaction, and providing an average unit price of the securities,

(a) the total number of securities of the same type acquired under an automatic securities purchase plan or compensation arrangement, or under all such plans or arrangements, for the calendar year; and

(b) the total number of securities of the same type disposed of under all specified dispositions of securities under an automatic securities purchase plan, or under all such plans, for the calendar year;

"automatic securities purchase plan" means a dividend or interest reinvestment plan, a stock dividend plan, or any other plan established by an issuer or by a subsidiary of an issuer to facilitate the acquisition of securities of the issuer if the timing of acquisitions of securities, the number of securities which may be acquired under the plan by a director or officer of the issuer or of the subsidiary of the issuer, and the price payable for the securities are established in advance by written formula or criteria set out in a plan document and not subject to a subsequent exercise of discretion;

"cash payment option" means a provision in a dividend or interest reinvestment plan under which a participant is permitted to make cash payments to purchase from the issuer, or from an administrator of the plan, securities of the issuer's own issue;

"compensation arrangement" includes, but is not limited to, an arrangement, whether or not set out in any formal document and whether or not applicable to only one individual, under which cash, securities or related financial instruments, including, for greater certainty, options, stock appreciation rights, phantom shares, restricted shares or restricted share units, deferred share units, performance units or performance shares, stock, stock dividends, warrants, convertible securities, or similar instruments, may be received or purchased as compensation for services rendered, or otherwise in connection with holding an office or employment with a reporting issuer or a subsidiary of a reporting issuer;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;

"credit derivative" means a derivative in respect of which the underlying security, interest, benchmark or formula is, or is related to or derived from, in whole or in part, a debt or other financial obligation of an issuer;

"derivative"

(a) means an instrument, agreement, security or exchange contract, the market price, value or payment obligations of which is derived from, referenced to, or based on an underlying security, interest, benchmark or formula;

(b) despite paragraph (a), in Ontario and New Brunswick, has the same meaning as in securities legislation and, in the case of Québec, *The Derivatives Act*;

"dividend or interest reinvestment plan" means an arrangement under which a holder of securities of an issuer is permitted to direct that the dividends, interest or distributions paid on the securities be applied to the purchase, from the issuer or an administrator of the issuer, of securities of the issuer's own issue;

"economic exposure" in relation to an issuer

(a) means the extent to which the economic or financial interests of a person or company are aligned with the trading price of securities of the issuer or the economic or financial interests of the issuer;

(b) despite paragraph (a), in Ontario, has the same meaning as in securities legislation;

"economic interest" in a security or an exchange contract means

(a) a right to receive or the opportunity to participate in a reward, benefit or return from a security or an exchange contract, or

(b) exposure to a risk of a financial loss in respect of a security or an exchange contract;

(c) despite paragraphs (a) and (b), in British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick, has the same meaning as in securities legislation;

"exchange contract"

(a) means a futures contract or an option that meets both of the following requirements:

(i) its performance is guaranteed by a clearing agency; and

(ii) it is traded on an exchange pursuant to standardized terms and conditions set out in that exchange's by-laws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange;

(b) despite paragraph (a), in British Columbia, Alberta, Saskatchewan and New Brunswick, has the same meaning as in securities legislation;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"income trust" means a trust or an entity, including corporate and non-corporate entities, the securities of which entitle the holder to net cash flows generated by an underlying business or income-producing properties owned through the trust or by the entity;

"insider report" means a report to be filed by an insider under securities legislation;

"insider reporting requirement" means

(a) a requirement to file insider reports under Parts 3 and 4;

(b) a requirement to file insider reports under any provisions of Canadian securities legislation substantially similar to Parts 3 and 4; and

(c) a requirement to file an insider profile under NI 55-102, if applicable;

"investment issuer" means, in relation to an issuer, another issuer in respect of which the issuer is an insider;

"issuer event" means a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event that affects all holdings of a class of securities of an issuer in the same manner, on a per share basis;

"lump-sum provision" means a provision of an automatic securities purchase plan that allows a director or officer to acquire securities in consideration of an additional lump-sum payment, and includes a cash payment option;

"major subsidiary" means a subsidiary of an issuer if

(a) the assets of the subsidiary, as included in the issuer's most recent annual audited or interim balance sheet, are 30 percent or more of the consolidated assets of the issuer reported on that balance sheet [*or after January 1, 2011, a statement of financial position*], or

(b) the revenues of the subsidiary, as included in the issuer's most recent annual audited or interim income statement, are 30 percent or more of the consolidated revenues of the issuer reported on that statement;

"management company" means a person or company established or contracted to provide significant management or administrative services to an issuer or a subsidiary of the issuer;

"NI 55-102" means National Instrument 55-102 *System for Electronic Disclosure by Insiders*;

"normal course issuer bid" means

(a) an issuer bid that is made in reliance on the exemption contained in securities legislation from requirements relating to issuer bids that is available if the number of securities acquired by the issuer within a period of twelve months does not exceed 5 percent of the securities of that class issued and outstanding at the commencement of the period, or

(b) a normal course issuer bid as defined in the rules or policies of the Toronto Stock Exchange (TSX), the TSX Venture Exchange or an exchange that is a recognized exchange, as defined in National Instrument 21-101 *Marketplace Operation*, and that is conducted in accordance with the rules or policies of that exchange;

"operating entity" means a person or company with an underlying business or with assets owned in whole or in part by an income trust for the purposes of generating cash flow;

"post-conversion beneficial ownership" has the meaning ascribed to that term in subsection (4);

"principal operating entity" means an operating entity that is a major subsidiary of an income trust;

"related financial instrument"

(a) means

(i) an instrument, agreement, security or exchange contract the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or,

(ii) any other instrument, agreement, or understanding that affects, directly or indirectly, a person or company's economic interest in a security or an exchange contract;

(b) despite paragraph (a), in British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick, has the same meaning as in securities legislation;

"reporting insider" has the meaning ascribed to that term in section 3.2;

"significant shareholder" means a person or company that has beneficial ownership of, or control or direction over, whether direct or indirect, or a combination of beneficial ownership of, and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 percent of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution;

"significant shareholder based on post-conversion beneficial ownership" has the meaning ascribed to that term in subsection (5);

"specified disposition of securities" means a disposition or transfer of securities referred to in subsection 5.1(3);

"stock dividend plan" means an arrangement under which securities of an issuer are issued by the issuer to holders of securities of the issuer as a stock dividend or other distribution out of earnings, retained earnings or capital; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

(2) **Affiliate** – In this Instrument, an issuer is an affiliate of another issuer if

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same person or company.

(3) **Control** – In this Instrument, a person or company (first person or company) is considered to control another person or company (second person or company) if

(a) the first person or company, beneficially owns or exercises control or direction over, whether direct or indirect, securities of the second person or company carrying votes which, if exercised, would entitle the first person or company to elect a majority of the directors of the second person or company, unless that first person or company holds the voting securities only to secure an obligation,

(b) the second person or company is a partnership, other than a limited partnership, and the first person or company holds more than 50 percent of the interests of the partnership, or

(c) the second person or company is a limited partnership and the general partner of the limited partnership is the first person or company.

(4) **Post-conversion beneficial ownership** – In this Instrument, a person or company is considered to have as of a given date post-conversion beneficial ownership of a security, including an unissued security, if the person or company is the beneficial owner of a security convertible into the security within 60 days following that date or has a right or obligation permitting or requiring the person or company, whether or not on conditions, to acquire beneficial ownership of the security within 60 days, by a single transaction or a series of linked transactions.

(5) **Significant shareholder based on post-conversion beneficial ownership** – A person or company is a significant shareholder based on post-conversion beneficial ownership if the person or company is not a significant shareholder but the person or company has beneficial ownership of, post-conversion beneficial ownership of, control or direction over, or any combination of beneficial ownership of, post-conversion beneficial ownership of, or control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 percent of the voting rights attached to all the issuer's outstanding voting securities, calculated in accordance with subsection (6), excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution.

(6) For the purposes of the calculation in subsection (5), an issuer's outstanding voting securities include securities in respect of which a person or company has post-conversion beneficial ownership.

1.2 **Persons and companies designated or determined to be insiders for the purposes of this Instrument**

(1) The following persons and companies are designated or determined to be insiders of an issuer:

(a) a significant shareholder based on post-conversion beneficial ownership of the issuer's securities;

(b) a management company that provides significant management or administrative services to the issuer or a major subsidiary of the issuer, and every director, officer and significant shareholder of the management company; and

(c) in the case of an issuer that is an income trust, every director, officer and significant shareholder of a principal operating entity.

(2) **Issuer as insider of reporting issuer** – If an issuer (the first issuer) becomes an insider of a reporting issuer (the second issuer), every director or officer of the first issuer is designated or determined to be an insider of the second issuer and must file insider reports in accordance with section 3.6 in respect of transactions relating to the second issuer that occurred in the previous six months or for such shorter period that the person or company was a director or officer of the first issuer.

(3) **Reporting issuer as insider of other issuer** – If a reporting issuer (the first issuer) becomes an insider of another issuer (the second issuer), every director or officer of the second issuer is designated or determined to be an insider of the first issuer and must file insider reports in accordance with section 3.6 in respect of transactions relating to the first issuer that occurred in the previous six months or for such shorter period that the person or company was a director or officer of the second issuer.

PART 2 APPLICATION

2.1 **Insider reporting requirements (insiders of Ontario reporting issuers)** – In Ontario, the insider reporting requirements in sections 3.3 and 3.4 of Part 3 do not apply to an insider of a reporting issuer under the *Securities Act* (Ontario).

Note: In Ontario, requirements similar to the insider reporting requirements in sections 3.3 and 3.4 of this Instrument are contained in section 107 of the *Securities Act* (Ontario).

2.2 **Reporting deadline** – In Ontario, for the purposes of subsection 107(2) of the *Securities Act* (Ontario), the prescribed period is within 5 calendar days of any change in the direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or any interest in, or right or obligation associated with, a related financial instrument.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1 **Reporting requirement** – An insider must file insider reports under this Part and Part 4 in respect of a reporting issuer if the insider is a reporting insider in respect of the reporting issuer.

3.2 **Reporting insider**

(1) An insider is a reporting insider in respect of a reporting issuer if the insider is

(a) the chief executive officer, the chief operating officer or the chief financial officer of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer;

(b) a director of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer;

(c) a person or company responsible for a principal business unit, division or function of the reporting issuer or of a major subsidiary of the reporting issuer;

(d) a significant shareholder of the reporting issuer;

(e) a management company that provides significant management or administrative services to the reporting issuer or a major subsidiary of the reporting issuer, and every director, officer and significant shareholder of the management company;

(f) an individual performing functions similar to the functions performed by any of the positions described in paragraphs (a) to (e);

(g) the reporting issuer itself, if it has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security;

(h) a person or company designated or determined to be an insider under subsection 1.2(1);

(i) any other insider that

(i) in the ordinary course receives or has access to information as to material facts or material changes concerning the reporting issuer or a major subsidiary of the reporting issuer before the material facts or material changes are generally disclosed; and

(ii) directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer or of a major subsidiary of the reporting issuer.

(2) In this section, a reference to “significant shareholder” includes a “significant shareholder based on post-conversion beneficial ownership”.

3.3 **Initial report** – A reporting insider must file an insider report within 10 days of becoming a reporting insider disclosing the reporting insider’s

(a) direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer, and

(b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

3.4 **Subsequent report** – A reporting insider must within five days of any of the following changes file an insider report disclosing a change in the reporting insider’s

(a) direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer, or

(b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

3.5 **Reporting requirements in connection with convertible or exchangeable securities** – For greater certainty, a reporting insider who exercises an option, warrant or other convertible or exchangeable security must file within five days of the change separate insider reports in accordance with section 3.4 disclosing the change in the reporting insider's direct or indirect beneficial ownership of, or control or direction over, each of

(a) the option, warrant or other convertible or exchangeable security, and

(b) the common shares or underlying securities.

3.6 **Report by certain designated insiders for certain historical transactions**

(1) A director or officer of an issuer (the first issuer) who is designated or determined to be an insider of another issuer (the second issuer) under subsections 1.2(2) or 1.2(3) must file, within 10 days of being designated or determined to be an insider of the second issuer, the insider reports that a reporting insider would have been required to file under Part 3 and Part 4 for all transactions involving securities of or related financial instruments involving securities of the second issuer that occurred in the previous six months or for such shorter period that the individual was a director or officer of the first issuer.

(2) A person or company who is required to file insider reports under subsection (1) must file the insider reports in paper format in accordance with Part 3 of NI 55-102 and file or cause to be filed the insider reports on the System for Electronic Document Analysis and Retrieval (SEDAR).

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 **Other agreements, arrangements or understandings**

(1) If a reporting insider enters into, materially amends, or terminates an agreement, arrangement or understanding described in subsection (2), the reporting insider must, within five days of this event, file an insider report in accordance with section 4.3.

(2) An agreement, arrangement or understanding must be reported under subsection (1) if

(a) the agreement, arrangement or understanding has the effect of altering, directly or indirectly, the reporting insider's economic exposure to the reporting insider's reporting issuer;

(b) the agreement, arrangement or understanding involves, directly or indirectly, a security of the reporting issuer or a related financial instrument involving a security of the reporting issuer; and

(c) the reporting insider is not otherwise required to file an insider report in respect of this event under Part 3 or any corresponding provision of Canadian securities legislation.

4.2 **Report of prior agreements, arrangements or understandings** – A reporting insider must, within ten days of becoming a reporting insider in respect of a reporting issuer, file an insider report in accordance with section 4.3 if

(a) the reporting insider, prior to the date the reporting insider most recently became a reporting insider, entered into an agreement, arrangement or understanding in respect of which the reporting insider would have been required to file an insider report under section 4.1 if the agreement, arrangement or understanding had been entered into on or after the date the reporting insider most recently became a reporting insider, and

(b) the agreement, arrangement or understanding remains in effect on or after the date the reporting insider most recently became a reporting insider.

4.3 **Contents of report** – An insider report required to be filed under section 4.1 or 4.2 must disclose the existence and material terms of the agreement, arrangement or understanding.

PART 5 EXEMPTION FOR AUTOMATIC SECURITIES PURCHASE PLANS

5.1 **Interpretation**

(1) In this Part, a reference to a director or officer means a director or officer who is

(a) a director or officer of a reporting issuer and a reporting insider in respect of the reporting issuer, or

(b) a director or officer of a subsidiary of a reporting issuer and a reporting insider of the reporting issuer.

(2) In this Part, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer.

(3) In this Part, a disposition or transfer of securities acquired under an automatic securities purchase plan is a specified disposition of securities if

(a) the disposition or transfer is incidental to the operation of the automatic securities purchase plan and does not involve a discrete investment decision by the director or officer; or

(b) the disposition or transfer is made to satisfy a tax withholding obligation arising from the distribution of securities under the automatic securities purchase plan and either

(i) the director or officer has elected that the tax withholding obligation will be satisfied through a disposition of securities, has communicated this election to the reporting issuer or the plan administrator not less than 30 days prior to the disposition and this election is irrevocable as of the 30th day before the disposition; or

(ii) the director or officer has not communicated an election to the reporting issuer or the plan administrator and, in accordance with the terms of the plan, the reporting issuer or the plan administrator is required to sell securities automatically to satisfy the tax withholding obligation.

5.2 **Reporting exemption**

(1) The insider reporting requirement does not apply to a director or officer for an acquisition or disposition of securities described in subsection (2) if the director or officer complies with the alternative reporting requirement in section 5.4.

(2) The exemption in subsection (1) applies to

(a) an acquisition of securities of the reporting issuer under an automatic securities purchase plan, other than an acquisition of securities under a lump-sum provision of the plan; or

(b) a specified disposition of securities of the reporting issuer under an automatic securities purchase plan.

5.3 **Acquisition of options or similar securities** – The exemption in section 5.2 does not apply to an acquisition of options or similar securities granted to a director or officer.

5.4 **Alternative reporting requirement**

(1) A director or officer is exempt under section 5.2 from the insider reporting requirement if the insider files an insider report within the time period described in subsection (2) disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition of securities under an automatic securities purchase plan not previously disclosed by or on behalf of the director or officer, and each specified disposition of securities under the automatic securities purchase plan not previously disclosed by or on behalf of the director or officer.

(2) The deadline for filing the insider report under subsection (1) is

(a) in the case of any securities acquired under the automatic securities purchase plan that have been disposed of or transferred, other than securities that have been disposed of or transferred as part of a specified disposition of securities, within five days of the disposition or transfer; and

(b) in the case of any securities acquired under the automatic securities purchase plan during a calendar year that have not been disposed of or transferred, and any securities that have been disposed of or transferred as part of a specified disposition of securities, within 90 days of the end of the calendar year.

(3) Subsection (1) does not apply to a director or officer if, at the time the insider report described in subsection (1) is due,

(a) the director or officer is not a reporting insider; or

(b) the director or officer is exempt from the insider reporting requirement.

PART 6 EXEMPTION FOR CERTAIN ISSUER GRANTS

6.1 **Interpretation**

(1) In this Part, a reference to a director or officer means a director or officer who is

(a) a director or officer of a reporting issuer and a reporting insider in respect of the reporting issuer, or

(b) a director or officer of a subsidiary of a reporting issuer and a reporting insider of the reporting issuer.

(2) In this Part, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer.

6.2 **Reporting exemption** – The insider reporting requirement does not apply to a director or officer for the acquisition of securities of the reporting issuer under a compensation arrangement established by the reporting issuer or by a subsidiary of the reporting issuer, if

(a) the reporting issuer has previously disclosed the existence and material terms of the compensation arrangement in an information circular or other public document filed on SEDAR;

(b) the reporting issuer has previously filed in respect of the acquisition an issuer grant report on SEDAR in accordance with section 6.3; and

(c) the director or officer complies with the alternative reporting requirement in section 6.4.

6.3 **Issuer grant report** – An issuer grant report filed under this Part in respect of a compensation arrangement must include

(a) the date the options or other securities were issued or granted;

(b) the number of options or other securities issued or granted to each director or officer;

(c) the price at which the options or other securities were issued or granted and the exercise price;

(d) the number and type of securities issuable on the exercise of the options or other securities; and

(e) any other material terms that have not been previously disclosed or filed in a public filing on SEDAR.

6.4 **Alternative reporting requirement**

(1) A director or officer is exempt under section 6.2 from the insider reporting requirement if the insider files an insider report within the time period described in subsection (2) disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition of securities under the compensation arrangement not previously disclosed by or on behalf of the director or officer, and each specified disposition of securities under the compensation arrangement not previously disclosed by or on behalf of the director or officer.

(2) The deadline for filing the insider report under subsection (1) is

(a) in the case of any securities acquired under the compensation arrangement that have been disposed of or transferred, within five days of the disposition or transfer; and

(b) in the case of any securities acquired under the compensation arrangement during a calendar year that have not been disposed of or transferred, within 90 days of the end of the calendar year.

(3) Subsection (1) does not apply to a director or officer if, at the time the insider report described in subsection (1) is due,

(a) the director or officer is not a reporting insider; or

(b) the director or officer is exempt from the insider reporting requirement.

PART 7 EXEMPTIONS FOR NORMAL COURSE ISSUER BIDS AND PUBLICLY DISCLOSED TRANSACTIONS

7.1 **Reporting exemption for NCIBs** – The insider reporting requirement does not apply to an issuer for an acquisition of securities of its own issue by the issuer under a normal course issuer bid.

7.2 **Reporting requirement** – An issuer who relies on the exemption in section 7.1 must file an insider report disclosing each acquisition of securities by it under a normal course issuer bid within 10 days of the end of the month in which the acquisition occurred.

7.3 **General exemption for other transactions that have been otherwise disclosed** – The insider reporting requirement does not apply to an issuer in connection with a transaction, other than a normal course issuer bid, involving securities of its own issue if the existence and material terms of the transaction have been generally disclosed in a public filing on SEDAR.

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

8.1 **Reporting exemption** – The insider reporting requirement does not apply to a reporting insider whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting insider's reporting issuer changes as a result of an issuer event of the reporting issuer.

8.2 **Reporting requirement** – A reporting insider who relies on the exemption in section 8.1 must file an insider report, disclosing all changes in beneficial ownership of, or control or direction, whether direct or indirect, over securities of the reporting issuer as a result of an issuer event that have not previously been reported by or on behalf of the insider, within the time required by securities legislation for the insider to report any other subsequent change in beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer.

PART 9 GENERAL EXEMPTIONS

9.1 **Reporting exemption (mutual funds)** – The insider reporting requirement does not apply to an insider of an issuer that is a mutual fund.

9.2 **Reporting exemption (non-reporting insiders)** – The insider reporting requirement does not apply to an insider of an issuer if the insider is not a reporting insider in respect of that issuer.

9.3 **Reporting exemption (certain insiders of investment issuers)** – The insider reporting requirement does not apply to a director or officer of a significant shareholder, or a director or officer of a subsidiary of a significant shareholder, in respect of securities of an investment issuer or a related financial instrument involving a security of the investment issuer if the director or officer

(a) does not in the ordinary course receive or have access to information as to material facts or material changes concerning the investment issuer before the material facts or material changes are generally disclosed; and

(b) is not a reporting insider in relation to the investment issuer in any capacity other than as a director or officer of the significant shareholder or a subsidiary of the significant shareholder.

9.4 **Reporting exemption (nil report)** – The insider reporting requirement does not apply to a reporting insider if the reporting insider

(a) does not have any beneficial ownership of, or control or direction over, whether direct or indirect, securities of the issuer;

(b) does not have any interest in, or right or obligation associated with, a related financial instrument involving a security of the issuer; and

(c) has not entered into any agreement, arrangement or understanding as described in section 4.1.

9.5 **Reporting exemption (corporate group)** – The insider reporting requirement does not apply to a reporting insider if

(a) the reporting insider is a subsidiary or other affiliate of another reporting insider (the affiliated reporting insider); and

(b) the affiliated reporting insider has filed an insider report that discloses substantially the same information as would be contained in an insider report filed by the reporting insider, including details of the reporting insider's

(i) direct or indirect beneficial ownership of, or control or direction over, securities of the reporting insider's reporting issuer; and

(ii) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

9.6 **Reporting exemption (executor and co-executor)** – The insider reporting requirement does not apply to a reporting insider in respect of securities of an issuer beneficially owned or controlled, directly or indirectly, by an estate if

(a) the reporting insider is an executor, administrator or other person or company who is a representative of the estate (referred to in this section as an executor of the estate), or a director or officer of an executor of the estate;

(b) the reporting insider is subject to the insider reporting requirement solely because of the reporting insider being an executor or a director or officer of an executor of the estate; and

(c) another executor or director or officer of an executor of the estate has filed an insider report that discloses substantially the same information as would be contained in an insider report filed by the reporting insider in respect of securities of an issuer beneficially owned or controlled, directly or indirectly, by the estate.

9.7 **Exempt persons and transactions** – The insider reporting requirement does not apply to

(a) a transfer, pledge or encumbrance of securities by a reporting insider for the purpose of giving collateral for a debt made in good faith so long as there is no limitation on the recourse available against the insider for any amount payable under such debt;

(b) the receipt by a reporting insider of a transfer, pledge or encumbrance of securities of an issuer if the securities are transferred, pledged or encumbered as collateral for a debt under a written agreement and in the ordinary course of business of the insider;

(c) a reporting insider, other than a reporting insider that is an individual, that enters into, materially amends or terminates an agreement, arrangement or understanding which is in the nature of a credit derivative;

(d) a reporting insider who did not know and, in the exercise of reasonable diligence, could not have known of the alteration to economic exposure described in section 4.1;

(e) the acquisition or disposition of a security, or an interest in a security, of an investment fund, provided that securities of the reporting issuer do not form a material component of the investment fund's market value; or

(f) the acquisition or disposition of a security, or an interest in a security, of an issuer that holds directly or indirectly securities of the reporting issuer, if:

(i) the reporting insider is not a control person of the issuer; and

(ii) the reporting insider does not have or share investment control over the securities of the reporting issuer.

PART 10 – DISCRETIONARY EXEMPTIONS

10.1 **Exemptions from this Instrument**

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 11 – EFFECTIVE DATE

11.1 **Effective Date** – This Instrument comes into force on ●.

APPENDIX C

COMPANION POLICY 55-104CP
INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

(1) National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the Instrument) sets out the principal insider reporting requirements and exemptions for insiders of issuers that are reporting issuers.[1]

(2) The purpose of this Policy is to help you understand how the Canadian Securities Administrators (the CSA or we) interpret or apply certain provisions of the Instrument.

1.2 Background to the Instrument

(1) The Instrument centralizes the principal insider reporting requirements and most exemptions in one location to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance.

(2) The focus of the Instrument is on the substantive legal insider reporting requirements rather than the procedural requirements relating to the electronic filing of insider reports. Issuers and insiders should review National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102 SEDI) in order to determine their obligations for the electronic filing of insider reports.

(3) Although the Instrument sets out the principal insider reporting requirements and exemptions for issuers and insiders in Canada, a number of other instruments also contain exemptions from the insider reporting requirements, including

(a) National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);

(b) National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103);

(c) National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101); and

(d) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102).

We have not included the insider reporting exemptions from these instruments in the Instrument as we think these exemptions are better situated within the context of these other instruments. However, issuers and insiders may wish to review these instruments in determining whether any additional exemptions from the insider reporting requirements are available.

1.3 Policy Rationale for Insider Reporting in Canada

(1) The insider reporting requirements serve a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.

(2) Insider reporting also helps prevent illegal or otherwise improper activities involving stock options and similar equity-based instruments, including stock option backdating, option repricing, and the opportunistic timing of option grants (spring-loading or bullet-dodging), since the requirement for timely disclosure of option grants and public scrutiny of such disclosure will generally limit opportunities for insiders to engage in improper dating practices.

(3) Insiders should interpret the insider reporting requirements in the Instrument with these policy rationales in mind and in a manner that gives priority to substance over form.

[1] In Ontario, the principal insider reporting requirements are set out in Part XXI of the *Securities Act* (Ontario) (the Ontario Act). See Part 2 of this Policy.

1.4 Definitions used in the Instrument

(1) **General** – Many of the terms for which the Instrument provides definitions are defined in the securities legislation of certain jurisdictions but not others. A term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern insider reporting; or (b) the context otherwise requires.

Accordingly, the definition of these terms in the Instrument uses the phrase "despite paragraph (a), in [*certain enumerated jurisdictions*], this term has the same meaning as in securities legislation". This means that, in the case of the jurisdictions specifically identified in the definition, the definition in the securities statute applies. However, in the case of the jurisdictions not specifically identified in the definition, the definition in the Instrument applies.

The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Instrument.

(2) **Directors and Officers** – Where the Instrument uses the term "directors" or "officers", insiders of an issuer that is not a corporation must refer to the definitions in securities legislation of "director" and "officer". The definitions of "director" and "officer" typically include persons acting in capacities similar to those of a director or an officer of a company or individuals who perform similar functions. Corporate and non-corporate issuers and their insiders must determine, in light of the particular circumstances, which individuals or persons are acting in such capacities for the purposes of complying with the Instrument.

Similarly, the terms "chief executive officer" and "chief financial officer" include the individuals that have the responsibilities normally associated with these positions or act in a similar capacity. This determination is to be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

(3) **Economic Interest** – The term "economic interest" in a security is a core component of the definition of "related financial instrument" which is part of the primary insider reporting requirement in Part 3 of the Instrument. We intend the term to have broad application and to refer to the economic attributes ordinarily associated in common law with beneficial ownership of a security, including

- the potential for gain in the nature of interest, dividends or other forms of distributions of income on the security;
- the potential for gain in the nature of a capital gain realized on a disposition of the security, to the extent that the proceeds of disposition exceed the tax cost (that is, gains associated with an appreciation in the security's value); and
- the potential for loss in the nature of a capital loss on a disposition of the security, to the extent that the proceeds of disposition are less than the tax cost (that is, losses associated with a fall in the security's value).

For example, a reporting insider who owns securities of his or her reporting issuer could reduce or eliminate the risk associated with a fall in the value of the securities while retaining ownership of the securities by entering into a derivative transaction such as an equity swap. The equity swap would represent a "related financial instrument" since, among other things, the agreement would affect the reporting insider's economic interest in a security of the reporting issuer.

(4) **Economic Exposure** – The term "economic exposure" is used in Part 4 of the Instrument and is part of the supplemental insider reporting requirement. The term generally refers to the link between a person's economic or financial interests and the economic or financial interests of the reporting issuer in which the person is an insider.

For example, an insider with a substantial proportion of his or her personal wealth invested in securities of his or her reporting issuer will be highly exposed to changes in the fortunes of the reporting issuer. Conversely, an insider who holds no securities of a reporting issuer (and does not participate in a compensation arrangement involving securities of the reporting issuer) will generally have exposure limited to their salary and any other compensation arrangements that do not involve securities of the reporting issuer.

All other things being equal, if an insider changes his or her ownership interest in a reporting issuer (either directly, through a purchase or sale of securities of the reporting issuer, or indirectly, through a derivative transaction involving securities of the reporting issuer), the insider will generally be changing his or her economic exposure to the reporting issuer. Similarly, if an insider enters into a hedging transaction that has the effect of reducing the sensitivity of the

insider to changes in the reporting issuer's share price or performance, the insider will generally be changing his or her economic exposure to the reporting issuer.

(5) **Major Subsidiary** – The definition of "major subsidiary" is a key element of the definition of "reporting insider". The determination of whether a subsidiary is a major subsidiary will generally require a backward-looking determination based on the issuer's most recent annual audited or interim financial statements.

If an issuer acquires a subsidiary or undertakes a reorganization, with the result that a subsidiary will come within the definition of major subsidiary once the issuer next files its annual audited or interim financial statements, the subsidiary will not be a major subsidiary until such filing, and directors and officers of the subsidiary will not be reporting insiders until such filing.

Although not required to do so, insiders may choose to file insider reports upon completion of the acquisition or reorganization rather than wait for the issuer to file its next set of financial statements. Similarly, if a subsidiary ceases to be a major subsidiary because of an acquisition or other reorganization by the parent issuer, but the subsidiary continues to be a major subsidiary based on information contained within the issuer's most recently filed financial statements, the issuer or reporting insiders may wish to consider applying for an exemption from the insider reporting requirement.

(6) **Related Financial Instrument** – Historically, there has been some uncertainty as to whether, as a matter of law, certain derivative instruments involving securities are themselves securities. This uncertainty has resulted in questions as to whether a reporting obligation existed or how insiders should report the instrument. The Instrument resolves this uncertainty through the definition of "related financial instrument". Under the Instrument, it is generally not necessary to determine whether a particular instrument is a security or a related financial instrument since the insider reporting requirement in Part 3 of the Instrument applies to both securities and related financial instruments.

To the extent the following instruments do not, as a matter of law, constitute securities, they will generally constitute related financial instruments:

- a forward contract, futures contract, stock purchase contract or similar contract involving securities of the insider's reporting issuer;
- options issued by an issuer other than the insider's reporting issuer;
- stock-based compensation instruments, including phantom stock units, deferred share units (DSUs), restricted share awards (RSAs), performance share units (PSUs), stock appreciation rights (SARs) and similar instruments;
- a debt instrument or evidence of deposit issued by a bank or other financial institution for which part or all of the amount payable is determined by reference to the price, value or level of a security of the insider's reporting issuer (a linked note); and
- most other agreements, arrangements or understandings that were previously subject to an insider reporting requirement under former Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (MI 55-103).

PART 2 APPLICATION

2.1 Application in Ontario – In Ontario, the insider reporting requirements are set out in Part XXI of the Ontario Act. For this reason, sections 3.3 and 3.4 of the Instrument do not apply in Ontario. However, the insider reporting requirements set out in the Instrument and in Part XXI of the Ontario Act are substantially harmonized. Accordingly, in this Policy, we omit separate references to the requirements of the Ontario Act except where it is necessary to highlight a difference between the requirements of the Instrument and the Ontario Act.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1 Meaning of beneficial ownership

(1) **General** – The term "beneficial ownership" is not defined in securities legislation. Accordingly, beneficial ownership must be determined in accordance with the ordinary principles of property and trust law of a local jurisdiction. In Québec, due to the fact that the concept of beneficial ownership does not exist in civil law, the meaning of beneficial ownership has the meaning ascribed to it in section 1.4 of Regulation 14-501Q. The concept of beneficial ownership in

Québec legislation is often used in conjunction with the concept of control and direction, which allows for a similar interpretation of the concept of common law beneficial ownership in most jurisdictions.

(2) **Deemed beneficial ownership** – Although securities legislation does not define beneficial ownership, securities legislation in certain jurisdictions may deem a person to beneficially own securities in certain circumstances. For example, in some jurisdictions, a person is deemed to beneficially own securities that are beneficially owned by a company controlled by that person or by an affiliate of such company.

(3) **Post-conversion beneficial ownership** – Under the Instrument, a person has "post-conversion beneficial ownership" of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the security within 60 days. For example, a person who owns special warrants convertible at any time and without payment of additional consideration into common shares will be considered to have post-conversion beneficial ownership of the underlying common shares. Under the Instrument, a person who has post-conversion beneficial ownership of securities may in certain circumstances be designated or determined to be an insider and may be a reporting insider. For example, if a person owns 9.9% of an issuer's common shares and then acquires special warrants convertible into an additional 5% of the issuer's common shares, the person will be designated or determined to be an insider under section 1.2 of the Instrument. The person will be a reporting insider because the person will be a "significant shareholder based on post-conversion beneficial ownership" under section 3.2 of the Instrument.

The concept of post-conversion beneficial ownership of the underlying securities into which securities are convertible within 60 days is consistent with similar provisions for determining beneficial ownership of securities for the purposes of the early warning requirements in section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and in Ontario, subsection 90(1) of the Ontario Act.

(4) **Beneficial ownership of securities held in a trust** – Under common law trust law, beneficial ownership is commonly distinguished from legal ownership. Under the civil law, a trust is governed by the Quebec Civil Code. Under the common law, a trustee is generally considered to be the legal owner of the trust property; the beneficiary, the beneficial owner. A reporting insider who has a beneficial interest in securities held in a trust may have or share beneficial ownership of the securities for insider reporting purposes, depending on the particular facts of the arrangement and upon the governing law of the trust, whether common law or civil law. We will generally consider a person to have or share beneficial ownership of securities held in a trust if the person has or shares

(a) a beneficial interest in the securities held in the trust and has or shares voting or investment power over the securities held in the trust; or

(b) legal ownership of the securities held in the trust and has or shares voting or investment power over the securities held in the trust.

(5) **Disclaimers of beneficial ownership** – The CSA generally will not regard a purported disclaimer of a beneficial interest in or beneficial ownership of securities as being effective for the purposes of determining beneficial ownership under securities legislation unless such disclaimer is irrevocable and has been generally disclosed to the public.

3.2 Meaning of control or direction – The term "control or direction" is not defined in Canadian securities legislation except in Québec, where the *Securities Act* (Québec), in sections 90, 91 and 92, define the concept of control and deems situations where a person has control over securities. A person will generally have control or direction over securities if the person, directly or indirectly, through any contract, arrangement, understanding or relationship or otherwise has or shares

(a) voting power, which includes the power to vote, or to direct the voting of, such securities and/or

(b) investment power, which includes the power to acquire or dispose, or to direct the acquisition or disposition of such securities.

This would include having control or direction over the securities through a power of attorney, a grant of limited trading authority, or management agreement. This would also include a situation where a reporting insider acts as a trustee for an estate (or in Québec as a liquidator) or other trust in which securities of the reporting insider's issuer are included within the assets of the trust. This may also be the case if a spouse (or any other person related to the reporting insider) owns the securities or acts as trustee, but the reporting insider has or shares control or direction over the securities held in trust.

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 Supplemental insider reporting requirement

(1) Part 4 of the Instrument contains the supplemental insider reporting requirement. The supplemental insider reporting requirement is consistent with the former insider reporting requirement for derivatives that previously existed in some jurisdictions under former MI 55-103. However, because Part 3 of the Instrument requires insiders, as part of the primary insider reporting requirement, to file insider reports about transactions involving "related financial instruments", most transactions that were previously subject to a reporting requirement under former MI 55-103 will be subject to the primary insider reporting requirement under Part 3 of the Instrument.

(2) If a reporting insider enters into an equity monetization transaction or other derivative-based transaction that falls outside of the primary insider reporting requirement in Part 3 of the Instrument, the reporting insider must report the transaction under Part 4. For example, certain types of monetization transactions may be found to alter an insider's "economic exposure" towards the insider's issuer but not alter the insider's "economic interest in a security". If a reporting insider enters into this type of transaction, the insider must report the transaction under Part 4.

4.2 Insider reporting of equity monetization transactions

(1) **What are equity monetization transactions?** There are a variety of sophisticated derivative-based strategies that permit investors to dispose, in economic terms, of an equity position in a public company without attracting certain tax and non-tax consequences associated with a conventional disposition of such position. These strategies, which are sometimes referred to as "equity monetization" strategies, allow an investor to receive a cash amount similar to proceeds of disposition, and transfer part or all of the economic risk and/or return associated with securities of an issuer, without actually transferring ownership of or control over such securities. (The term "monetization" generally refers to the conversion of an asset (such as securities) into cash.)

(2) **What are the concerns with equity monetization transactions?** Where a reporting insider enters into a monetization transaction, and does not disclose the existence or material terms of that transaction, there is potential for harm to investors and the integrity of the insider reporting regime because:

- an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer, may be able to profit improperly from such information by entering into derivative-based transactions that mimic trades in securities of the reporting issuer;
- market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and
- since the insider's publicly reported holdings no longer reflect the insider's true economic position in the issuer, the public reporting of such holdings (e.g., in an insider report or a proxy circular) may in fact materially mislead investors.

If a reporting insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, but for technical reasons it may be argued that the transaction falls outside of the primary insider reporting requirement in Part 3 of the Instrument, the insider will be required to file an insider report under Part 4 unless an exemption is available to the insider. In this way, the market can make its own determination as to the significance, if any, of the transaction in question.

PART 5 AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Automatic Securities Purchase Plans

(1) Section 5.1 of the Instrument contains an interpretation provision that applies to Part 5. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for both acquisitions and specified dispositions of securities and related financial instruments under an automatic securities purchase plan (ASPP).

(2) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan or a lump-sum provision of a share purchase plan.

(3) The exemption does not apply to an "automatic securities disposition plan" (sometimes referred to as a "pre-arranged structured sales plan") (an ASDP) established between a reporting insider and a broker since an ASDP is designed to facilitate dispositions not acquisitions. However, if a reporting insider can demonstrate that an ASDP is genuinely an

automatic plan and that the insider cannot make discrete investment decisions through the plan, we may consider granting exemptive relief on an application basis to permit the insider to file reports on an annual basis.

(4) The exemption is not available for a grant of options or similar securities to reporting insiders, since, in many cases, the reporting insider will be able to make an investment decision in respect of the grant. If an insider is an executive officer or a director of the reporting issuer or a major subsidiary, the insider may be participating in the decision to grant the options or other securities. Even if the insider does not participate in the decision, we think information about options or similar securities granted to this group of insiders is important to the market and the insider should disclose this information in a timely manner.

5.2 Specified Dispositions of Securities

(1) Subsection 5.1(3)(a) of the Instrument provides that a disposition or transfer of securities is a specified disposition if, among other things, it does not involve a "discrete investment decision" by the director or officer. The term "discrete investment decision" generally refers to the exercise of discretion involved in a specific decision to purchase, hold or sell a security. The purchase of a security as a result of the application of a pre-determined, mechanical formula does not generally represent a discrete investment decision (other than the initial decision to enter into the plan). For example, for an individual who holds stock options in a reporting issuer, the decision to exercise the stock options will generally represent a discrete investment decision. If the individual is a reporting insider, we think the individual should report this information in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions.

(2) The definition of "specified disposition of securities" contemplates, among other things, a disposition made to satisfy a tax withholding obligation arising from the acquisition of securities under an ASPP in certain circumstances. Under some types of ASPPs, an issuer or plan administrator may sell, on behalf of a plan participant, a portion of the securities that would otherwise be distributed to the plan participant in order to satisfy a tax withholding obligation. In such plans, the participant typically may elect either to provide the issuer or the plan administrator with a cheque to cover this liability or to direct the issuer or plan administrator to sell a sufficient number of the securities that would otherwise be distributed to cover this liability. In many cases, for reasons of convenience, a plan participant will simply direct the issuer or the plan administrator to sell a portion of the securities.

Although we think that the election as to how a tax withholding obligation will be funded contains an element of a discrete investment decision, we are satisfied that, where the election occurs sufficiently in advance of the actual distribution of securities, it is acceptable for a report of a disposition made to satisfy a tax withholding obligation to be made on an annual basis. Accordingly, a disposition made to satisfy a tax withholding obligation will be a specified disposition of securities if it meets the criteria contained in clause 5.1(3)(b) of the Instrument.

5.3 Alternative Reporting Requirements – If securities acquired under an ASPP are disposed of or transferred, other than through a specified disposition of securities, and the insider has not previously disclosed the acquisition of these securities, the insider report should disclose, for each acquisition of securities which the insider is now disposing of or transferring, information about the date of acquisition of the securities, the number of securities acquired and the acquisition price of such securities. The report should also disclose, for each disposition or transfer, information about each disposition or transfer of securities.

5.4 Exemption from the Alternative Reporting Requirement – The rationale underlying the alternative reporting requirement is to ensure that reporting insiders periodically update their publicly disclosed holdings to ensure that their publicly disclosed holdings convey an accurate picture of their holdings. If an individual has ceased to be subject to the insider reporting requirements at the time the alternative report becomes due, the market generally would not benefit from the information in the alternative report. Accordingly, we provided an exemption in subsection 5.4(3) of the Instrument in these circumstances.

5.5 Design and Administration of Plans

(1) Part 5 of the Instrument provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation in an ASPP, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a particular plan of an issuer, the issuer should design and administer the plan in a manner that is consistent with this limitation.

(2) To fit within the definition of an ASPP, the plan must set out a written formula or criteria for establishing the timing of the acquisitions, the number of securities that the insider can acquire and the price payable. If a plan participant is able to exercise discretion in relation to these terms either in the capacity of a recipient of the securities or through participating in the decision-making process of the issuer making the grant, he or she may be able to make a discrete

investment decision in respect of the grant or acquisition. We think a reporting insider in these circumstances should disclose information about the grant in accordance within the normal timeframe and not on a deferred basis.

PART 6 ISSUER GRANT REPORTS

6.1 Overview

(1) Section 6.1 of the Instrument contains an interpretation provision that applies to Part 6. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for grants of securities and related financial instruments.

(2) A reporting insider who intends to rely on the exemption in Part 6 for a grant of stock options or similar securities must first confirm that the issuer has made the public disclosure required by section 6.3 of the Instrument. If the issuer has not made the required disclosure, the reporting insider must report the grant in accordance with the normal reporting requirements under Part 3 of the Instrument.

6.2 Policy rationale for the issuer grant report exemption

(1) The issuer grant report exemption reduces the regulatory burden associated with insider reporting of stock options and similar instruments since it allows an issuer to make a single filing on SEDAR. Since the market will have timely information about the existence and material terms of the grant, it is not necessary for each of the reporting insiders to file insider reports about the grant within the ordinary time periods.

(2) The concept of an issuer grant report is generally similar to the concept of an issuer event report in that the decision to make the grant originates with the issuer. Accordingly, at the time of the grant, the issuer will generally be in a better position than the reporting insiders who are the recipients of the grant to communicate information about the grant to the market in a timely manner.

(3) There is no obligation for an issuer to file an issuer grant report for a grant of stock options or similar instruments. An issuer may choose to assist its reporting insiders with their reporting obligations and also to communicate material information about its compensation practices to the market in a timely manner.

(4) If an issuer chooses not to file an issuer grant report, the issuer should take all reasonable steps to notify reporting insiders of their grants in a timely manner to allow reporting insiders to comply with their reporting obligations.

(5) The concept of an issuer grant report is different from the issuer event report that an issuer is required to make under Part 2 of NI 55-102 in that

(a) An issuer is not required to file an issuer grant report; and

(b) If an issuer chooses to file an issuer grant report, the issuer is required to file the report on SEDAR rather than on SEDI.

6.3 Form of an issuer grant report – There is no required form for an issuer grant report. An issuer may file a report in spreadsheet format or any other format that discloses the information required by section 6.3 of the Instrument.

PART 7 EXEMPTIONS FOR NORMAL COURSE ISSUER BIDS AND PUBLICLY DISCLOSED TRANSACTIONS

7.1 Introduction – Under securities legislation, a reporting issuer may become an insider of itself in certain circumstances and therefore subject to an insider reporting requirement in relation to transactions involving its own securities. Under the definition of “insider” in securities legislation, a reporting issuer becomes an insider of itself if it “has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security”. In certain jurisdictions, a reporting issuer may also become an insider of itself if it acquires and holds securities of its own issue through an affiliate, because in certain jurisdictions a person is deemed to beneficially own securities beneficially owned by affiliates. Where a reporting issuer is an insider of itself, the reporting issuer will also be a reporting insider under the Instrument.

7.2 General exemption for transactions that have been generally disclosed – Section 7.3 of the Instrument provides that the insider reporting requirement does not apply to an issuer in connection with a transaction, other than a normal course issuer bid, involving securities of its own issue if the existence and material terms of the transaction have been generally disclosed in a public filing made on SEDAR. Because of this exemption and the exemption for normal course issuer bids in section 7.1 of the Instrument, a reporting issuer that is an insider of itself will not generally need to file insider reports under Part 3 or Part 4.

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

8.1 [Intentionally left blank]

PART 9 EXEMPTIONS

9.1 **Scope of exemptions** – The exemptions under the Instrument are only exemptions from the insider reporting requirements contained in the Instrument and are not exemptions from the provisions in Canadian securities legislation imposing liability for improper insider trading.

9.2 **Reporting Exemption** – The definition of "reporting insider" includes certain enumerated persons or companies that generally satisfy the criteria contained in subsection (i) of the definition of reporting insider, namely, access to material undisclosed information and significant power or influence over the reporting issuer. Although there is no general exemption for holders of the enumerated persons or companies based on lack of access to material undisclosed information or lack of power or influence, we will consider applications for exemptive relief where the issuer or reporting insider can demonstrate that the reporting insider does not satisfy these criteria. This might include, for example, a situation where a foreign subsidiary may appoint a locally resident individual as a director to meet residency requirements under applicable corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.

9.3 **Reporting Exemption (certain directors and officers of insider issuers)** – The reference to "material facts or material changes concerning the investment issuer" in section 9.3 of the Instrument is intended to include information that originates at the insider issuer level but which concerns or is otherwise relevant to the investment issuer. For example, in the case of an issuer that has a subsidiary investment issuer, a decision at the parent issuer level that the subsidiary investment issuer will commence or discontinue a line of business would generally represent a "material fact or material change concerning the investment issuer". Similarly, a decision at the parent issuer level that the parent issuer will seek to sell its holding in the subsidiary investment issuer would also generally represent a "material fact or material change concerning the investment issuer." Accordingly, a director or officer of the parent issuer who routinely had access to such information concerning the investment issuer would not be entitled to rely on the exemption for trades in securities of the investment issuer.

9.4 **Exemption for a pledge where there is no limitation on recourse** – The exemption in section 9.7(a) of the Instrument is limited to pledges of securities in which there is no limitation of recourse since a limitation on recourse may effectively allow the borrower to "put" the securities to the lender to satisfy the debt. The limitation on recourse may effectively represent a transfer of the risk that the securities may fall in value from the insider to the lender. In these circumstances, the transaction should be transparent to the market.

A loan secured by a pledge of securities may contain a term limiting recourse against the borrower to the pledged securities (a legal limitation on recourse). Similarly, a loan secured by a pledge of securities may be structured as a limited recourse loan if the loan is made to a limited liability entity (such as a holding corporation) owned or controlled by the insider (a structural limitation on recourse). If there is a limitation on recourse as against the insider either legally or structurally, the exemption would not be available.

9.5. **Exemption for certain investment funds** – The exemption in section 9.7(e) of the Instrument is limited to situations where securities of the reporting insider's reporting issuer do not form a material component of the investment fund's market value. In determining materiality, similar considerations to those involved in the concepts of material fact and material change would apply.

PART 10 CONTRAVENTION OF INSIDER REPORTING REQUIREMENTS

10.1 Contravention of insider reporting requirements

(1) It is an offence to fail to file an insider report in accordance with the filing deadlines prescribed by the Instrument or to submit information in an insider report that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

(2) A failure to file an insider report in a timely manner or the filing of an insider report that contains information that is materially misleading may result in one or more of the following:

- the imposition of a late filing fee;
- the reporting insider being identified as a late filer on a public database of late filers maintained by certain securities regulators;

- in the case of financial years ending on or after December 31, 2010, the reporting insider being identified as a late filer in the reporting insider's annual information circular;

- the issuance of a cease trade order that prohibits the reporting insider from trading in securities of the applicable reporting issuer, whether direct or indirect, until the failure to file is corrected; or

- in appropriate circumstances, enforcement proceedings.

(3) A reporting issuer that files an information circular on or after ● must describe any late filing fees relating to the late filing of insider reports imposed by a securities regulatory authority against any director or executive officer of the issuer during the most recently completed financial year. This requirement is located in Item 17 of Form 51-102F5 *Information Circular*. Information relating to non-compliance by directors and executive officers with their insider reporting requirements may be relevant to an investor's voting decision and should be disclosed. This requirement may also create additional incentives for issuers to assist their directors and executive officers in complying with their insider reporting obligations.

PART 11 INSIDER TRADING

11.1 Non-reporting insiders – Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.

11.2 Written disclosure policies – National Policy 51-201 *Disclosure Standards* outlines detailed best practices for issuers for disclosure and information containment and provides interpretative guidance of insider trading laws. Issuers should adopt written disclosure policies to assist directors, officers, employees and other representatives in discharging timely disclosure obligations. Written disclosure policies also should provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading on inside information. Adopting the CSA best practices may assist issuers to take all reasonable steps to contain inside information.

11.3 Insider Lists – Reporting issuers may also wish to consider preparing and periodically updating a list of the persons working for them or their affiliates who have access to material facts or material changes concerning the reporting issuer before those facts or changes are generally disclosed. This type of list may allow reporting issuers to control the flow of undisclosed information. The CSA may request additional information from time to time, including asking the reporting issuer to prepare and provide a list of insiders, in the context of an insider reporting review.

APPENDIX D

PROPOSED AMENDMENT INSTRUMENT FOR
MULTILATERAL INSTRUMENT 11-102
PASSPORT SYSTEM

1. This Instrument amends Multilateral Instrument 11-102 *Passport System*.

2. Appendix D of Multilateral Instrument 11-102 *Passport System* is amended by:

a) repealing all of the provisions in Appendix D that refer to MI 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* and corresponding provisions in British Columbia;

b) inserting the following two new rows (see below) directly under the provision in Appendix D referring to the System for electronic disclosure by insiders (SEDI); and

Provision	BC	AB	SK	MB	Que	NS	NB	PEI	NL	YK	NWT	Nun	ON
Insider reporting requirements	NI 55-104 (except as noted below)												NI 55-104 (except as noted below)
Primary insider reporting requirement	Part 3 of NI 55-104												s.107

c) repealing all of the rows under the subheading “Insider Reporting” and substituting the following new row (see below) directly under the subheading “Insider Reporting” and directly above the subheading “Take-Over Bids and Issuer Bids”.

Provision	BC	AB	SK	MB	Que	NS	NB	PEI	NL	YK	NWT	Nun	ON
Insider Reporting													
Insider reporting require-ments	s. 87	s. 182	s. 116	s. 109	s. 89.3	s. 113	s.135	s. 1 of Local Rule 55-501	s. 108	s. 1 of Local Rule 55-501	s. 2 of Local Rule 55-501	s.1 of Local Rule 55-501	s. 107
Take-Over Bids and Issuer Bids													

3. This amendment comes into force on •.

APPENDIX E

PROPOSED AMENDMENT INSTRUMENT FOR NATIONAL INSTRUMENT 14-101 *DEFINITIONS*

1. This Instrument amends National Instrument 14-101 *Definitions*.

2. National Instrument 14-101 *Definitions* is amended by repealing the current definition of "insider reporting requirement" and substituting it with the following:

"insider reporting requirement" means

a) a requirement to file insider reports under Parts 3 and 4 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;

b) a requirement to file insider reports under any provisions of Canadian securities legislation substantially similar to Parts 3 and 4 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*; and

c) a requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, if applicable.

3. This amendment comes into force on ●.

APPENDIX F

PROPOSED AMENDMENT INSTRUMENT FOR
NATIONAL INSTRUMENT 62-103
THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID
AND INSIDER REPORTING ISSUES

1. This Instrument amends National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*.

2. National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* is amended as follows:

a) in section 1.1, the following is added after the definition of "news release":

"NI 55-104" means National Instrument 55-104 *Insider Reporting Requirements and Exemptions***";**

b) in subsection 9.1(1), the following is added after the phrase "is exempt from the insider reporting requirement for a reporting issuer":

"other than the requirement to file insider reports under Part 4 of NI 55-104**";**

c) in subsection 9.1(5), the following is added after the phrase "is exempt from the insider reporting requirement for a reporting issuer":

"other than the requirement to file insider reports under Part 4 of NI 55-104**";**

3. This amendment comes into force on ●.

APPENDIX G

PROPOSED AMENDMENT INSTRUMENT FOR
FORM 51-102F5 *INFORMATION CIRCULAR*
OF NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

1. This Instrument amends Form 51-102F5 *Information Circular*

2. Form 51-102F5 is amended by adding the following new item after "Item 16 Additional Information":

"Item 17 Insider Reporting Late Filings

(1) Describe any late filing fees relating to the late filing of insider reports imposed by a securities regulatory authority against any director or executive officer of your company during the most recently completed financial year, and include with this description the following information:

(a) the name of the director or executive officer against whom the late filing fees were imposed;

(b) the amount of the late filing fees and whether the late filing fees have been or will be paid by the director or executive officer or by the company (including any reimbursement by the company of fees paid by the director or executive officer); and

(c) a brief description of the reason the late filing fees were imposed.

(2) Despite subsection (1), no disclosure of any late filing fee is required if the securities regulatory authority that imposed the late filing fee subsequently provides written confirmation that the late filing fee was imposed due to error."

3. This amendment comes into force on ●.

[Note: Expected to be December 31, 2010, allowing for a transition period.]

APPENDIX H

REPEAL OF NATIONAL INSTRUMENT 55-101
INSIDER REPORTING EXEMPTIONS

1. This Instrument repeals National Instrument 55-101 *Insider Reporting Exemptions*.

2. This Instrument comes into force on ●.

APPENDIX I

RESCISSION OF COMPANION POLICY 55-101CP *INSIDER REPORTING EXEMPTIONS* TO NATIONAL INSTRUMENT 55-101 *INSIDER REPORTING EXEMPTIONS*

1. This Instrument repeals Companion Policy 55-101CP to National Instrument 55-101 *Insider Reporting Exemptions*.

2. This Instrument comes into force on ●.

APPENDIX J

REPEAL OF MULTILATERAL INSTRUMENT 55-103
INSIDER REPORTING OF CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)

1. **This Instrument repeals Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)*.**

2. **This Instrument comes into force on ●.**

APPENDIX K

RESCISSION OF COMPANION POLICY 55-103CP
INSIDER REPORTING OF CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)
TO MULTILATERAL INSTRUMENT 55-103
INSIDER REPORTING OF CERTAIN DERIVATIVE TRANSACTIONS (EQUITY MONETIZATION)

1. **This Instrument repeals Companion Policy 55-103CP to Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)*.**

2. **This Instrument comes into force on ●.**

APPENDIX L

ADDITIONAL NOTICE REQUIREMENTS IN ONTARIO

Authority for the Proposed Instrument

In those jurisdictions in which the Proposed Instrument is to be adopted as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Proposed Instrument. The Proposed Instrument is being proposed for implementation in Ontario as a rule. In Ontario, the following provisions of the *Securities Act* (Ontario) (the Ontario Act) provide the Ontario Securities Commission (the Ontario Commission) with authority to adopt the Proposed Instrument as a rule:

- Paragraph 143(1)10 of the Ontario Act authorizes the Ontario Commission to prescribe requirements in respect of the books, records and other documents required by subsection 19(1) of the Ontario Act to be kept by market participants.

- Paragraph 143(1)11 of the Ontario Act authorizes the Ontario Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.

- Paragraph 143(1)30 of the Ontario Act authorizes the Ontario Commission to prescribe time periods under section 107 of the Ontario Act or to vary or make rules that provide for exemptions from any requirement of the insider trading provisions contained in Part XXI of the Ontario Act.

- Paragraph 143(1)30.1 of the Ontario Act authorizes the Ontario Commission to regulate the disclosure or furnishing of information to the public or the Ontario Commission by insiders, including,

  (i) prescribing filing requirements for the reporting by insiders of their respective direct or indirect beneficial ownership of, or control or direction over, securities of a reporting issuer or changes in ownership, control or direction,

  (ii) prescribing requirements respecting the reporting by insiders of any interest in or right or obligation associated with a related financial instrument or changes in such interests, rights or obligations, and

  (iii) prescribing requirements respecting the reporting by insiders of any agreement, arrangement or understanding that alters, directly or indirectly, an insider's economic interest in a security or an insider's economic exposure to a reporting issuer or changes in such agreements, arrangements or understandings.

- Paragraph 143(1)30.2 of the Ontario Act authorizes the Ontario Commission to prescribe requirements in respect of a reporting issuer to facilitate compliance by insiders of the reporting issuer with the Ontario Act and with the rules made under paragraph 143(1)30.1 of the Ontario Act.

- Paragraph 143(1)30.3 of the Ontario Act authorizes the Ontario Commission to require that reports under paragraph 143(1)30.1 shall also provide information for the period of up to six months before a person or company became an insider.

- Paragraph 143(1)(37) of the Ontario Act authorizes the Commission to make rules regulating labour sponsored investment fund corporations and prescribing insider reporting requirements for or in respect of such corporations.

- Paragraph 143(4) of the Ontario Act authorizes the Commission to designate classes of persons or companies not to be insiders for the purpose of the definition of "insider", and designate classes of persons or companies for the purpose of clause (f) of the definition of "insider" in subsection 1(1) of the Ontario Act, if the persons or companies would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenue of the issuer, to be insiders.

- Paragraph 143(1)39 of the Ontario Act authorizes the Commission to make rules, among other things, respecting the media, format, preparation, form, content, execution and certification of documents required under the Ontario Act.

Repealed Instruments

The Proposed Materials would replace the following instruments currently in effect:

- National Instrument 55-101 *Insider Reporting Exemptions* (NI 55-101);
- Companion Policy 55-101CP *Insider Reporting Exemptions* (55-101CP);
- Multilateral Instrument 55-103 *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (MI 55-103); and
- Companion Policy 55-103CP *Insider Reporting of Certain Derivative Transactions (Equity Monetization)* (55-103CP).

For the purposes of this notice, the use of the term "repealed" in the Proposed Materials, in the case of NI 55-101 and MI 55-103, means "revoked" as is contemplated in s.143.2(12) of the Ontario Act. Correspondingly, the term "repealed", in the case of 55-101CP and 55-103CP, means "rescinded", as is contemplated in s.143.8(12) of the Ontario Act.

Related Instruments

The Proposed Instrument and the Proposed Policy are related to each other as they deal with the same subject matter. In Ontario, the proposed Companion Policy is related to sections 106 to 109 of the Ontario Act and Part VIII of the Regulation to the Ontario Act.

Proposed Revocation of Certain Regulations

Subject to the approval of the Minister, in view of the fact that the Proposed Instrument will contain certain exemptions similar to exemptions currently contained in Ontario Regulation 1015 of the Ontario Act, we propose to recommend that the following regulations be revoked:

Description of Reporting Requirement	Ont. Reg. 1015	New Provision in Proposed Instrument
Exemption based on no holdings	s. 166	s. 9.4
Report of transfer by insider	s. 167	n/a
Reporting exemption (corporate group)	s. 170	s. 9.5
Executor exemption	s. 171	s. 9.6

Alternatives Considered

We believe the Proposed Instrument will contribute towards achieving our objectives to modernize, harmonize and streamline insider reporting in Canada. Historically, the insider reporting requirements and exemptions have been set out in a variety of statutes, rules and regulations in each jurisdiction. We are proposing to centralize the main insider reporting requirements[1] and exemptions in a single national instrument to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance. We have not considered alternatives to this approach.

Unpublished Materials

In proposing the Proposed Instrument and the Proposed Policy, the CSA have not relied on any significant unpublished study, report or decision.

Anticipated Costs and Benefits

Although certain insiders will become subject to an accelerated filing deadline, many other insiders will benefit as they will no longer have to file insider reports. Reporting issuers will benefit through reduced compliance costs. Investors and other market participants who use the insider reporting system will benefit since these amendments will improve the effectiveness of the insider reporting system. Because of the acceleration of the filing deadline, the market will receive information about insider transactions more quickly.

[1] In Ontario, the principal insider reporting requirements are set out in Part XXI of the Ontario Act.

In addition, the insider reporting requirement will focus on a more senior, core group of insiders. This should result in an enhanced deterrent and signalling effect (the key reasons for insider reporting) on the core group of senior insiders who have the greatest access to material undisclosed information and who will continue to report. The information from this core group of insiders will not be drowned out by insider reports filed by persons who, although statutory insiders with some access to material undisclosed information, are outside this core group.

The Canadian securities regulatory authorities are of the view that the benefits of the Proposed Instrument outweigh the costs.