

## Chapter 6

# Request for Comments

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### 6.1.1 Notice of Proposed Amendment to and Restatement of National Instrument 55-101 Exemption from Certain Insider Reporting Requirements and Companion Policy 55-101CP Exemption from Certain Insider Reporting Requirements

#### NOTICE OF PROPOSED INSTRUMENT AND COMPANION POLICY

#### PROPOSED AMENDMENT TO AND RESTATEMENT OF NATIONAL INSTRUMENT 55-101 *EXEMPTION FROM CERTAIN INSIDER REPORTING REQUIREMENTS* AND COMPANION POLICY 55-101CP *EXEMPTION FROM CERTAIN INSIDER REPORTING REQUIREMENTS*

#### ***Request for Public Comment***

The Canadian Securities Administrators (the CSA) are publishing for a 90-day comment period the following documents:

- National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (the Proposed Instrument), and
- Companion Policy 55-101CP *Exemption from Certain Insider Reporting Requirements* (the Proposed Policy).

The Proposed Instrument and the Proposed Policy are collectively referred to as the Proposed Materials.

The Proposed Materials are being published concurrently with this Notice and can be obtained on websites of CSA members, including the following:

- [www.bcsc.bc.ca](http://www.bcsc.bc.ca)
- [www.albertasecurities.com](http://www.albertasecurities.com)
- [www.spsc.gov.sk.ca](http://www.spsc.gov.sk.ca)
- [www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)
- [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- [www.lautorite.qc.ca](http://www.lautorite.qc.ca)

The Proposed Materials are intended to replace the current version of National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (the Current Instrument) and Companion Policy 55-101CP *Exemption from Certain Insider Reporting Requirements* (the Current Policy) that came into effect in all CSA jurisdictions on May 15, 2001. The Current Instrument and the Current Policy will continue to be in force in all jurisdictions until such time as they are replaced by the Proposed Materials or otherwise amended or repealed.

We request comments on the Proposed Materials by August 13, 2004.

#### ***Substance and Purpose of the Current Instrument and the Current Policy***

Canadian securities legislation requires insiders of a reporting issuer to disclose ownership of and trading in securities of that reporting issuer. The insider reporting requirements serve a number of functions, including deterring illegal insider trading and increasing market efficiency by providing investors with information concerning the trading activities of insiders of the issuer, and, by inference, the insiders' views of their issuers' prospects.

The purpose of the Current Instrument and the Current Policy is to provide certain exemptions from the obligation to file insider reports under Canadian securities legislation where the policy rationale underlying the obligation do not apply. For more

information about the Current Instrument and the Current Policy, please refer to the Notice and related materials which were published in May 2001 at the time the Current Instrument and Current Policy came into force. Copies of this Notice, the Current Instrument and the Current Policy can be obtained on the websites of the CSA members noted above.

***Substance and Purpose of the Proposed Instrument and the Proposed Policy***

1. *Summary of Changes to the Current Instrument and the Current Policy*

The most significant changes to the Current Instrument are as follows:

- (a) The Proposed Instrument contains an exemption from the insider reporting requirements for senior officers of a reporting issuer or a subsidiary of a reporting issuer who meet the following criteria (the *non-executive officer exemption*):
- the individual is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;
  - the individual does not in the ordinary course receive or have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed; and
  - the individual is not an insider of the reporting issuer in any other capacity.
- (b) The requirement in the Current Instrument to prepare and maintain a list of insiders exempted from the insider reporting requirement by virtue of certain provisions of the Current Instrument has been supplemented by a requirement to maintain a list of insiders who are not so exempted. As an alternative to complying with the requirement to prepare and maintain a list of exempt insiders and a list of non-exempt insiders, a reporting issuer may instead file an undertaking with the regulator or securities regulatory authority that it will make available to the regulator or securities regulatory authority, promptly upon request, a list containing the information described in such lists as at the time of the request.
- (c) The Proposed Instrument also contains a new requirement requiring reporting issuers to prepare and maintain reasonable policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer.
- (d) The existing exemption in the Current Instrument relating to *acquisitions* of securities pursuant to an “automatic securities purchase plan” has been amended to include an exemption for certain *dispositions* of securities that commonly occur in connection with a plan, and that we believe may be reported on an annual basis (the *specified disposition amendment*). These dispositions include:
- a disposition which is incidental to the operation of an automatic securities purchase plan and which does not involve a “discrete investment decision” by the director or senior officer; and
  - a disposition which is made to satisfy a tax withholding obligation arising from the distribution of securities under an automatic securities purchase plan and which results from an irrevocable election by the senior officer or director to fund the tax withholding obligation through a disposition of securities not less than 30 days prior to the date of the disposition.
- (e) The existing exemption in the Current Instrument relating to acquisitions of securities pursuant to an “automatic securities purchase plan” has also been amended to provide that the alternative reporting requirement that allows for a consolidated report to be filed within 90 days of the end of the calendar year does not apply if, at the time the alternative report becomes due, the individual has ceased to be subject to an insider reporting requirement (the *alternative report amendment*). This situation may arise, for example, in the following circumstances:
- the individual may have ceased to be an insider at the time the alternative filing requirement becomes due; or
  - the individual may have subsequently become entitled to rely on an exemption contained in an exemptive relief decision or Canadian securities legislation (such as, for example, an exemption contained in NI 55-101).

We have attached to this Notice as Appendix “A” a blackline showing the changes that we propose to make to the Current Instrument and the Current Policy.

2. *Reasons for proposing these changes*

We have proposed the changes contained in the Proposed Materials as we believe that these changes will improve the effectiveness of the insider reporting system by better focusing the insider reporting requirement on meaningful information that is important to the market.

Accordingly, we believe that the principal benefits associated with these changes are as follows:

- enhanced deterrence against unlawful insider trading, since the insider reporting obligation will now focus more closely on insiders who routinely have access to material undisclosed information;
- increased market efficiency, since the trading activities of “true” insiders may be obscured under the current system by the large volume of insider reports filed by persons who are statutory insiders but who do not routinely have access to material undisclosed information; and
- a significant reduction in the regulatory burden associated with insider reporting on insiders, issuers and the securities regulatory authorities.

We have briefly summarized the rationale underlying the non-executive officer exemption, the specified disposition amendment and the alternative report amendment below.

3. *Background to the non-executive officer exemption*

The definition of “insider” in Canadian securities legislation includes individuals who hold the title of “vice-president”. When the insider reporting requirements were developed in the 1960s, persons who held such a title generally were considered to exercise a senior officer function and were therefore required to file insider reports.

Since that time, we recognize that it has become widespread industry practice, particularly in the financial services sector, for issuers to grant the title of “vice-president” to certain employees primarily for marketing purposes. This phenomenon is sometimes referred to as “title inflation” or “title creep”. In many cases, these individuals do not ordinarily have access to material undisclosed information prior to general disclosure and would not reasonably be considered to be senior officers from a functional point of view. (In this notice, such vice-presidents are referred to as “non-executive vice-presidents”.) For many larger issuers, the ratio of non-executive vice-presidents to vice-presidents who exercise a senior officer function may be very high.

We recognize that requiring *all* vice-presidents to file insider reports may impose significant regulatory costs on these individuals and their issuers for little or no corresponding benefit. It has been suggested that the current requirements may actually serve to undermine the policy objectives underlying the insider reporting requirements, since the trading activities of “true” insiders may be hidden by the large volume of insider reports filed by non-executive vice-presidents. Consequently, as a result of changes in industry practice, we believe that it is no longer appropriate to require all persons who are “vice-presidents” to file insider reports.

In March 2002, CSA staff published a staff notice entitled *CSA Staff Notice 55-306 Applications for Relief from the Insider Reporting Requirements by certain Vice-Presidents*. This notice outlined the circumstances in which staff would support applications for relief from the requirements under Canadian securities legislation to file insider reports by persons who are technically insiders by virtue of holding the title of “vice-president” but who do not have access to confidential inside information.

Subsequent to the publication of this notice, the CSA have had the opportunity to consider a number of applications for insider reporting relief by non-executive vice-presidents. The amendments contained in the Proposed Materials are generally consistent with the recommendations contained in the staff notice and with recent exemptive relief orders.

4. *Background to the specified disposition amendments*

Part 5 of the Current Instrument provides a limited exemption from the insider reporting requirement for an insider who participates in an automatic securities purchase plan. As is made clear by section 4.2 of the Current Policy, the exemption is available only in circumstances in which the insider, by virtue of participation in the plan, is not making discrete investment decisions for acquisitions under such plan. Accordingly, under the Current Instrument, the exemption is not available for

- acquisitions that do involve a discrete investment decision (such as an acquisition of securities pursuant to a “cash-payment option” under a plan), or
- dispositions (regardless of whether the disposition in question involves a discrete investment decision).

We recognize that, under some types of automatic securities purchase plans, certain dispositions of securities may occur in the course of the ordinary operation of the plan, which dispositions may not reflect a discrete investment decision on the part of the participant. For example, an automatic securities purchase plan may involve a convertible or exchangeable security, such as in the following example:

- Step 1 – Grant of a restricted share unit or award (each unit or award representing the right to receive one common share once the unit or award has vested) under an automatic securities purchase plan.
- Step 2 – The restricted share unit or award vests.
- Step 3 – In accordance with the terms of the automatic securities purchase plan, the restricted share units or awards are exchanged for common shares.

Under the above example (and assuming the restricted share unit or award constitutes a security), the use of an exchangeable security may negate the benefit of the insider reporting exemption for acquisitions under an automatic securities purchase plan. This is because, although the acquisition of common shares at step 3 is exempt, the disposition of the restricted share unit or award is not.

Accordingly, we have proposed a change to the exemption in Part 5 of the Current Instrument to allow for certain types of dispositions specified in section 5.4 of the Rule (a specified disposition). A specified disposition includes a disposition that is incidental to the operation of the automatic securities purchase plan and that does not involve a discrete investment decision by the director or senior officer.

A specified disposition will also include a disposition made to satisfy a tax withholding obligation arising from the distribution of securities under an automatic securities purchase plan in certain circumstances. We recognize that, under some types of automatic securities purchase plans, it is not uncommon for an issuer or plan administrator to 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. Generally, the plan participant is required to 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.

However, where a plan participant elects to dispose of a portion of the securities to be acquired under an automatic securities purchase plan to fund a tax withholding obligation, the plan participant will lose the benefit of the automatic securities purchase plan exemption, since the participant will be required to file a report in respect of the disposition at the time of the acquisition. Although we are of the view that the election as to how a tax withholding obligation will be funded does contain 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” if

- the participant 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 automatic securities purchase 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
- the participant has not communicated an election to the reporting issuer or the automatic securities purchase plan administrator and, in accordance with the terms of the automatic securities purchase plan, the reporting issuer or the automatic securities purchase plan administrator is required to sell securities automatically to satisfy the tax withholding obligation.

##### **5. *Background to the alternative report amendment***

Under the Current Instrument, if a director or senior officer relies on the exemption contained in section 5.1 of the Current Instrument (the automatic securities purchase plan exemption), the director or senior officer becomes subject, as a consequence of such reliance, to the alternate reporting requirement under section 5.3 to file one or more reports within 90 days of the end of the calendar year (the alternative reporting requirement).

For example, a director may periodically acquire securities under an automatic securities purchase plan throughout a year and rely on the automatic securities purchase plan exemption from the insider reporting requirement for such acquisitions. As a consequence of such reliance, however, the director becomes subject to an alternative reporting requirement which is due within 90 days of the end of that year.

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Under the Current Instrument, the director is required to file the alternative report even if, at the time the alternate report becomes due, the individual has ceased to be an insider or is otherwise exempt from the insider reporting requirement generally.

We are of the view that the principal rationale underlying the alternative reporting requirement is to ensure that 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 reporting requirement becomes due, we are of the view that it is not necessary to ensure that the alternative report is filed. Accordingly, we have added an exemption in this regard.

**Authority for the Proposed National 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 make rules providing for exemptions from any requirement of the insider trading provisions of the Ontario Act contained in Part XXI of the Ontario Act. 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.

**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 *Securities Act* (Ontario) and Part VIII of the Regulation to the Act.

**Alternatives Considered**

Consideration was given to continuing the current practice of granting the relief set out in the Proposed Instrument on an *ad hoc* basis in response to applications made. The CSA have concluded, however, that this practice is neither efficient nor effective and accordingly the Proposed Instrument would provide relief to certain insiders who fall within the scope of the insider reporting requirement.

**Unpublished Materials**

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

**Anticipated Costs and Benefits**

The Proposed Instrument will be beneficial to certain market participants who fall within the scope of the insider reporting requirement of Canadian securities legislation as they will in some cases be relieved from reporting and in other cases will have to report less frequently. In addition, those persons or the reporting issuer of which they are an insider will no longer have to incur the expense of applying for relief.

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

**Comments**

Interested parties are invited to make written submissions with respect to the Proposed Instrument and the Proposed Policy. Submissions received by August 13, 2004 will be considered. Submissions received after that date may or may not be considered, depending upon the status of the initiative at that time.

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Submissions should be sent to all of the Canadian securities regulatory authorities listed below in care of the Ontario Commission, in duplicate, as indicated below:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
The Manitoba Securities Commission  
Ontario Securities Commission  
L'authorité des marchés financiers  
Office of the Administrator, New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Department of Government Services and Lands, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon  
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, Ontario M5H 3S8

A diskette containing the submissions (in DOS or Windows format, preferably Word) should also be submitted. As securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to any of:

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### **Text of Proposed Instrument and Proposed Policy**

The text of the Proposed Instrument and the Proposed Policy follows.

May 14, 2004.

Appendix "A"

NATIONAL INSTRUMENT 55-101  
EXEMPTION FROM CERTAIN INSIDER  
REPORTING REQUIREMENTS

PART 41  
41.1

DEFINITIONS

Definitions - In this Instrument

"acceptable summary form", in relation to the alternative form of insider report described in section 5.3, means an insider report that discloses as a single transaction, using December 31 of the relevant year as the date of the transaction, and providing an average unit price.

"automatic" (a) the total number of securities of the same type acquired under all automatic share purchase plans for the calendar year, and

(b) the total number of securities of the same type disposed of under all specified dispositions of securities for the calendar year.

"automatic securities purchase plan" means a dividend or interest reinvestment plan, a stock dividend plan or any other plan of a reporting issuer or of a subsidiary of a reporting issuer to facilitate the acquisition of securities of the reporting issuer if the timing of acquisitions of securities, the number of securities which may be acquired under the plan by a director or senior officer of the reporting issuer or of the subsidiary of the reporting issuer and the price payable for the securities are established by written formula or criteria set out in a plan document;

"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 issuer, securities of the issuer's own issue, in addition to the securities

(a) purchased using the amount of the dividend or interest or distribution payable to or for the account of the participant; or

(b) acquired as a stock dividend or other distribution out of earnings or surplus;

"dividend or interest reinvestment plan" means an arrangement under which a holder of securities of an issuer is permitted to direct that the dividends or 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;

"investment issuer" in relation to a reporting issuer (the first reporting issuer) means a second reporting issuer

(a) in respect of which the first reporting issuer is an insider; and

(b) that is not a subsidiary of the first reporting issuer.

"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 which allows a director or senior officer to acquire securities in consideration of an additional lump-sum payment, including, in the case of a dividend or interest reinvestment plan which is an automatic securities purchase plan, a cash payment option;

"major subsidiary" means a subsidiary of a reporting issuer if

(a) the assets of the subsidiary, on a consolidated basis with its subsidiaries, as included in the most recent annual audited balance sheet of the reporting issuer ~~that the reporting issuer has filed~~, are 10 percent or more of the consolidated assets of the reporting issuer reported on that balance sheet, or

(b) the revenues of the subsidiary, on a consolidated basis with its subsidiaries, as included in the most recent annual audited income statement of the reporting issuer ~~that the reporting issuer has filed~~, are 10 percent or more of the consolidated revenues of the reporting issuer reported on that statement;

"normal course issuer bid" means

- (a) an issuer bid which is made in reliance on the exemption contained in securities legislation from certain requirements relating to issuer bids which 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 policies of The Montreal Exchange, The ~~Canadian~~TSX Venture Exchange or The Toronto Stock Exchange, conducted in accordance with the policies of that exchange; ~~and~~

"specified disposition of securities" means a disposition or transfer of securities in connection with an automatic securities purchase plan that satisfies the conditions set forth in section 5.4; and

"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 or surplus.

**PART 22 EXEMPTION FROM INSIDER REPORTING FOR CERTAIN DIRECTORS AND SENIOR OFFICERS OF CERTAIN SUBSIDIARIES**

**2.1 Reporting Exemption (Certain Directors) - The insider reporting requirement does not apply to a director of a subsidiary of a reporting issuer in respect of securities of the reporting issuer if the director**

- (a) does not in the ordinary course receive or have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed;
- (b) is not a director of a major subsidiary; and
- (c) is not an insider of the reporting issuer in a capacity other than as a director of the subsidiary.

**2.2 Reporting Exemption (Certain Directors) - The insider reporting requirement does not apply to a director of a subsidiary of a reporting issuer in respect of securities of an investment issuer if the director**

- (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;
- (b) is not a director of a major subsidiary; and

**2.1 Reporting Exemption Subject to section 2.2, the insider reporting requirement does not apply to a director or senior officer of a subsidiary of a reporting issuer in respect of securities of the reporting issuer.**

- (c) is not an insider of the investment issuer in a capacity other than as a director of the subsidiary.

**2.2 Limitation The exemption in section 2.1 is not available if the director or senior officer**

**2.3 Reporting Exemption (Certain Senior Officers) - The insider reporting requirement does not apply to a senior officer of a reporting issuer or a subsidiary of the reporting issuer in respect of securities of the reporting issuer if the senior officer**

- (a) in the ordinary course receives or has
- (a) is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;
- (b) does not in the ordinary course receive or have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed; and
- (c) is not an insider of the reporting issuer in a capacity other than as a senior officer of the reporting issuer or a subsidiary of the reporting issuer.

(b) ~~is a director or senior officer of a major subsidiary; or~~

**2.4** Reporting Exemption (Certain Senior Officers) - The insider reporting requirement does not apply to a senior officer of a reporting issuer or a subsidiary of the reporting issuer in respect of securities of an investment issuer if the senior officer

(e) ~~is an insider~~

(a) ~~is not in charge of a principal business unit, division or function of the reporting issuer in a capacity other than as a director or senior officer of the subsidiary or a major subsidiary of the reporting issuer;~~

(b) ~~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~~

(c) ~~is not an insider of the investment issuer in a capacity other than as a senior officer of the reporting issuer or a subsidiary of the reporting issuer.~~

**PART 33** **EXEMPTION FROM INSIDER REPORTING FOR DIRECTORS AND SENIOR OFFICERS OF AFFILIATES OF INSIDERS OF A REPORTING ISSUER**

**3.13.1** **Québec** - This Part does not apply in Québec.

**3.23.2** **Reporting Exemption** - Subject to section 3.3, the insider reporting requirement does not apply to a director or senior officer of an affiliate of an insider of a reporting issuer in respect of securities of the reporting issuer.

**3.33.3** **Limitation** - The exemption in section 3.2 is not available if the director or senior officer

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

(b) is an insider of the reporting issuer in a capacity other than as a director or senior officer of an affiliate of an insider of the reporting issuer; or

(c) is a director or senior officer of a company that supplies goods or services to the reporting issuer or to a subsidiary of the reporting issuer or has contractual arrangements with the reporting issuer or a subsidiary of the reporting issuer, and the nature and scale of the supply or the contractual arrangements could reasonably be expected to have a significant effect on the market price or value of the securities of the reporting issuer.

**PART 4** ~~LISTS OF EXEMPTED INSIDERS~~ **LISTS OF INSIDERS**

**4.1** Lists of Exempted Insiders - Subject to section 4.2, a reporting issuer shall prepare and maintain

(a) a list of all insiders of the reporting issuer exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3, 2.4 and 3.2;

(b) a list of all insiders of the reporting issuer not exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3, 2.4 and 3.2; and

(c) reasonable policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer.

**4.1** ~~Lists of Exempted Insiders~~

**4.2** Exemption - A reporting issuer shall maintain a list of all insiders of the reporting issuer exempted from the insider reporting requirement by section 2.1 and shall maintain a list of all insiders of the reporting issuer exempted from the insider reporting requirement by section 3.2 may, as an alternative to complying with the requirement to prepare and maintain the lists described in subparagraphs 4.1(a) and 4.1(b), file an undertaking with the regulator or securities regulatory authority that the reporting issuer will, promptly upon request, make available to the regulator or securities regulatory authority a list containing the information described in subparagraphs 4.1(a) and 4.1(b) as at the time of the request.

**PART 55 REPORTING OF ACQUISITIONS UNDER AUTOMATIC SECURITIES PURCHASE PLANS**

**5.45.1 Reporting Exemption** - Subject to section 5.2, the insider reporting requirement does not apply to a director or senior officer of a reporting issuer or of a subsidiary of the reporting issuer for ~~the acquisition of securities of the reporting issuer pursuant to an automatic securities purchase plan, other than the acquisition of securities pursuant to a lump-sum provision of the plan.~~

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

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

**5.25.2 Limitation**

(1) The exemption in section 5.1 is not available to an insider that beneficially owns, directly or indirectly, voting securities of the reporting issuer, or exercises control or direction over voting securities of the reporting issuer, or a combination of both, carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the reporting issuer.

(2) In Québec, subsection (1) does not apply.

(3) In Québec, the exemption in section 5.1 is not available to a person who exercises control over more than 10 percent of a class of shares of a reporting issuer to which are attached voting rights or an unlimited right to a share of the profits of the reporting issuer and in its assets in case of winding-up.

**5.35.3 Alternative Reporting Requirement** - An insider who relies on the exemption from the insider reporting requirement contained in section 5.1 shall file a report, in the form prescribed for insider trading reports under securities legislation, disclosing on a transaction-by-transaction basis or in acceptable summary form, each acquisition of securities under the automatic securities purchase plan that has not previously been disclosed by or on behalf of the insider, and each specified disposition of securities under the automatic securities purchase plan that has not previously been disclosed by or on behalf of the insider.

(aa) for any securities acquired under the automatic securities purchase plan which have been disposed of or transferred, other than securities which have been disposed of or transferred as part of a specified disposition of securities, within the time required by securities legislation for filing a report disclosing the disposition or transfer; and

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

**5.4 Specified Disposition of Securities** - 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 senior 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 senior 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 automatic securities purchase 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 senior officer has not communicated an election to the reporting issuer or the automatic securities purchase plan administrator and, in accordance with the terms of the automatic securities purchase plan, the reporting issuer or the automatic securities purchase plan administrator is required to sell securities automatically to satisfy the tax withholding obligation.

**5.5** Alternative Reporting Exemption - If an insider relies on the exemption from the insider reporting requirement contained in section 5.1, and thereby becomes subject to a requirement under section 5.3 to file one or more reports within 90 days of the end of the calendar year (the alternative reporting requirement), the insider is exempt from the alternative reporting requirement if, at the time the alternative reporting requirement is due,

(a) the insider has ceased to be an insider; or

(b) the insider is entitled to a general exemption from the insider reporting requirements under an exemptive relief order or under an exemption contained in Canadian securities legislation.

**PART 66** **REPORTING FOR NORMAL COURSE ISSUER BIDS**

**6.46.1** **Reporting Exemption** - The insider reporting requirement does not apply to an issuer for acquisitions of securities of its own issue by the issuer under a normal course issuer bid.

**6.26.2** **Reporting Requirement** - An issuer who relies on the exemption from the insider reporting requirement contained in section 6.1 shall file a report, in the form prescribed for insider trading reports under securities legislation, 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.

**PART 77** **REPORTING FOR CERTAIN ISSUER EVENTS**

**7.47.1** **Reporting Exemption** - The insider reporting requirement does not apply to an insider of a reporting issuer whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer changes as a result of an issuer event of the issuer.

**7.27.2** **Reporting Requirement** - An insider who relies on the exemption from the insider reporting requirement contained in section 7.1 shall file a report, in the form prescribed for insider trading reports under securities legislation, disclosing all changes in direct or indirect beneficial ownership of, or control or direction over securities by, the insider for securities of the reporting issuer pursuant to 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 direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer.

**PART 88** **EFFECTIVE DATE**

**8.48.1** **Effective Date** - This National Instrument comes into force on ~~May 15, 2004.~~

**COMPANION POLICY 55-101CP  
TO NATIONAL INSTRUMENT 55-101  
EXEMPTION FROM CERTAIN INSIDER  
REPORTING REQUIREMENTS**

**PART 41 PURPOSE**

**4.1 Purpose** - The purpose of this Companion Policy is to set out the views of the Canadian securities regulatory authorities on various matters relating to National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (the "Instrument").

**PART 22 DEFINITIONS**

**2.42.1 Definitions** - The definition of automatic securities purchase plan in the Instrument includes employee share purchase plans, stock dividend plans and dividend or interest reinvestment plans so long as the criteria in the definition are met.

**PART 33 SCOPE OF EXEMPTIONS**

**3.43.1 Scope of Exemptions** - The exemptions under the Instrument are only exemptions from the insider reporting requirement and are not exemptions from the provisions in Canadian securities legislation imposing liability for improper insider trading.

**PART 44 EXEMPTION FOR CERTAIN DIRECTORS AND SENIOR OFFICERS**

**4.1 Exemption for Certain Directors**

(1) Section 2.1 of the Instrument contains an exemption from the insider reporting requirement for a director of a subsidiary of a reporting issuer in respect of securities of the reporting issuer if the director

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

(b) is not a director of a major subsidiary; and

(c) is not an insider of the reporting issuer in a capacity other than as a director of the subsidiary.

(2) The exemption in section 2.1 is not available for directors of a reporting issuer or for directors of a subsidiary of a reporting issuer that is a "major subsidiary" of the reporting issuer. In the case of directors of a reporting issuer, this is because such individuals, by virtue of being directors, routinely have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed. In view of the significance of a major subsidiary of a reporting issuer to the reporting issuer, we believe that it is appropriate to treat directors of such subsidiaries in an analogous manner to directors of the reporting issuer.

In the case of directors of subsidiaries of a reporting issuer that are not major subsidiaries of the reporting issuer, although such individuals, by virtue of being directors of the subsidiary, routinely have access to material undisclosed information about the subsidiary, such information generally will not constitute material undisclosed information about the reporting issuer since the subsidiary is not a major subsidiary of the reporting issuer.

(3) Under Canadian securities legislation, if a reporting issuer (the first reporting issuer) is itself an insider of another reporting issuer (the second reporting issuer), directors and senior officers of the first reporting issuer are insiders of the second reporting issuer. In the Instrument, the second reporting issuer is referred to as an "investment issuer". Section 2.2 of the Instrument contains an exemption for directors of a subsidiary of a reporting issuer that is not a major subsidiary of the reporting issuer in respect of trades in securities of an investment issuer of the reporting issuer, subject to certain conditions.

## 4.2 Exemption for Certain Senior Officers

- (1) Section 2.3 of the Instrument contains an exemption from the insider reporting requirements for senior officers of a reporting issuer or a subsidiary of a reporting issuer who meet the following criteria (the non-executive officer criteria):
- (a) the individual is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;
  - (b) the individual does not in the ordinary course receive or have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed; and
  - (c) the individual is not an insider of the reporting issuer in a capacity other than as a senior officer of the reporting issuer or a subsidiary of the reporting issuer.
- (2) The exemption contained in section 2.3 of the Instrument is available to senior officers of a reporting issuer as well as to senior officers of any subsidiary of the reporting issuer, regardless of size, so long as such individuals meet the non-executive officer criteria contained in the exemption. Accordingly the scope of the exemption is somewhat broader than the scope of the exemption contained in section 2.1 for directors of subsidiaries that are not major subsidiaries.
- In the case of directors of a reporting issuer, and directors of a major subsidiary of the reporting issuer, we believe that such individuals, by virtue of being directors, routinely have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed. Accordingly, the rationale for the exemption from the insider reporting requirement does not exist for these individuals.
- In the case of individuals who are "senior officers", however, we accept that many such individuals do not routinely have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed. For example, the term "senior officer" generally includes an individual who holds the title of "vice-president". We recognize that, in recent years, it has become industry practice, particularly in the financial services sector, for issuers to grant the title of "vice-president" to certain employees primarily for marketing purposes. In many cases, the title of "vice-president" does not denote a senior officer function, and such individuals do not routinely have access to material undisclosed information prior to general disclosure. Accordingly, we accept that it is not necessary to require all persons who hold the title of "vice-presidents" to file insider reports.
- (3) Similar to the exemption contained in section 2.2 of the Instrument, section 2.4 contains an exemption for senior officers of a reporting issuer, as well as to senior officers of a subsidiary of the reporting issuer, in respect of trades in securities of an investment issuer of the reporting issuer, subject to certain conditions.

## PART 5 LISTS OF INSIDERS

- (1) Section 4.1 of the Instrument requires a reporting issuer to prepare and maintain
- (a) a list of insiders of the reporting issuer exempted from the insider reporting requirement by a provision of the Instrument,
  - (b) a list of insiders of the reporting issuer not exempted by a provision of the Instrument, and
  - (c) reasonable policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer.
- (2) As an alternative to complying with the requirement to prepare and maintain the lists described in subparagraphs (a) and (b) of section 4.1 of the Instrument, a reporting issuer may file an undertaking with the regulator or securities regulatory authority instead. The undertaking requires the reporting issuer to make available to the regulator or securities regulatory authority, promptly upon request, a list containing the information described in subparagraphs (a) and (b) as at the time of the request. The principal rationale behind the requirement to prepare a list of exempt insiders and a list of non-

exempt insiders is to allow for an independent means to verify whether individuals who are relying on an exemption in fact are entitled to rely on the exemption. If a reporting issuer determines that it is not necessary to prepare and maintain such lists as part of its own policies and procedures relating to the monitoring and restricting the trading activities of its insiders, and is able to prepare and make available such lists promptly upon request, the rationale behind the list requirement would be satisfied.

- (3) Subparagraph 4.1(c) of the Instrument requires a reporting issuer to prepare and maintain reasonable written policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer. The Instrument does not seek to prescribe the content of such policies and procedures. It merely requires that such policies and procedures exist and that they be reasonable.

The CSA have articulated in National Policy 51-201 *Disclosure Standards* detailed best practices for issuers for disclosure and information containment and have provided a thorough interpretation of insider trading laws. The CSA recommend that issuers adopt written disclosure policies to assist directors, officers and 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. The CSA best practices offer guidance on broad issues including disclosure of material changes, timely disclosure, selective disclosure, materiality, maintenance of confidentiality, rumours and the role of analysts' reports. In addition, guidance is offered on such specifics as responsibility for electronic communications, forward-looking information, news releases, use of the Internet and conference calls. We believe that adopting the CSA best practices as a standard for issuers would assist issuers to ensure that they take all reasonable steps to contain inside information.

## **PART 6 AUTOMATIC SECURITIES PURCHASE PLANS**

### **4-16.1 Automatic Securities Purchase Plans**

- (41) Section 5.1 of the Instrument provides an exemption from the insider reporting requirement for acquisitions by a director or senior officer of a reporting issuer or of a subsidiary of a reporting issuer of securities of the reporting issuer pursuant to an automatic securities purchase plan.
- (22) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan, a "lump-sum" provision of a share purchase plan, or a similar provision under a stock option plan.
- (33) A person relying on this exemption who does not dispose of or transfer securities, other than securities which have been disposed of or transferred as part of a "specified disposition of securities" (discussed below), which were acquired under an automatic securities purchase plan during the year must file a report disclosing all acquisitions under the automatic securities purchase plan annually no later than 90 days after the end of the calendar year. If a person who relies on the exemption does dispose of or transfer securities acquired under an automatic securities purchase plan, other than securities which have been disposed of or transferred as part of a specified disposition of securities, the person must file a report disclosing the acquisition of those securities as contemplated by clause 5.3(a) of the Instrument.
- (44) Section 5.3 of the Instrument requires an insider who relies on the exemption for securities acquired under an automatic securities purchase plan to file an alternative report for each acquisition of securities acquired under the plan. We recognize that, in the case of securities acquired under an automatic securities purchase plan, the time and effort required to report each transaction as a separate transaction may outweigh the benefits to the market of having this detailed information. We believe that it is acceptable for insiders to report on a yearly basis aggregate acquisitions (with an average unit price) of the same securities through their automatic share purchase plans. Accordingly, in complying with the alternative reporting requirement contained in section 5.3 of the Instrument, an insider may report the acquisitions on either a transaction-by-transaction basis or in "acceptable summary form". The term "acceptable summary form" is defined to mean a report that indicates the total number of securities of the same type (e.g. common shares) acquired under all automatic share purchase plans for the calendar year as a single transaction using December 31 of the relevant year as the date of the transaction, and providing an average unit price (if available).

Similarly, an insider may report all specified dispositions of securities in a calendar year in acceptable summary form.

- (5) This section does not relieve a director or senior officer from his or her insider reporting obligations in respect of dispositions or transfers of securities-, except where the disposition or transfer is a "specified disposition of securities".

## **6.2 Specified Dispositions of Securities**

- (51) 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 senior 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 the requirements contained in clauses 5.4(b)(i) or (ii) are satisfied.
- (2) In the case of dispositions or transfers described in subsection 5.4(a) of the Instrument, namely a disposition or transfer that is incidental to the operation of the automatic securities purchase plan and that does not involve a discrete investment decision by the director or senior officer, we believe that such dispositions or transfers do not alter the policy rationale for deferred reporting of the acquisitions of securities acquired under an automatic securities purchase plan since such dispositions necessarily do not involve a discrete investment decision on the part of the participant.
- (3) The term "discrete investment decision" generally refers to a decision to alter the nature or the extent of a person's investment position in an issuer or other form of investment. The term is best illustrated by way of example. In the case of 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 an insider, we believe that this information should be communicated to the market in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions. A reasonable investor may conclude, for example, that the decision on the part of the insider to exercise the stock options now reflects a belief on the part of the insider that the price of the underlying securities has peaked.
- (4) Under some types of automatic securities purchase plans, certain dispositions of securities may occur in the course of the ordinary operation of the plan, and may not reflect a discrete investment decision on the part of the participant. For example, an automatic securities purchase plan may involve a convertible or exchangeable security. The use of an exchangeable security may negate the benefit of the insider reporting exemption for acquisitions under an automatic securities purchase plan because, although the acquisition of securities is exempt, the disposition of the convertible or exchangeable security is not. For this reason, the automatic securities purchase plan exemption will now allow for specified dispositions that meet this criteria in subsection 5.4(a).
- (5) The definition of "specified disposition of securities" also contemplates a disposition made to satisfy a tax withholding obligation arising from the acquisition of securities under an automatic securities purchase plan in certain circumstances. Under some types of automatic securities purchase plans, it is not uncommon for an issuer or plan administrator to 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. Generally, the plan participant is required to 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. Where a plan participant elects to dispose of a portion of the securities to be acquired under an automatic securities purchase plan to fund a tax withholding obligation, the plan participant will lose the benefit of the automatic securities purchase plan exemption, since the participant will be required to file a report in respect of the disposition at the time of the acquisition.
- (6) Although we are of the view that the election as to how a tax withholding obligation will be funded does contain 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" if

(a) the participant 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 automatic securities purchase 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

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

### **6.3 Reporting Requirements**

- (1) A director or senior officer must file a report disclosing dispositions or transfers of securities that are not specified dispositions of securities, and any acquisitions of securities which are not exempt from the insider reporting obligation, within the time periods prescribed by securities legislation. The report for such acquisitions or dispositions need not include acquisitions under an automatic securities purchase plan unless clause 5.3(a) of the Instrument requires disclosure of those acquisitions.
- (62) Clause 5.3(a) requires reports to be filed disclosing acquisitions of any securities under an automatic securities purchase plan which are disposed of or transferred, other than pursuant to a specified disposition or transfer of securities. Accordingly, in these circumstances, if securities acquired under an automatic securities purchase plan are disposed of or transferred, other than pursuant to a specified disposition or transfer of securities, and the acquisitions of these securities have not been previously disclosed in a report, the insider report will disclose, for each acquisition of securities which are disposed of or transferred, the particulars relating to the date of acquisition of such securities, the number of securities acquired and the acquisition price of such securities. The report would also disclose, for each disposition or transfer, the related particulars for each such disposition or transfer of securities. It would be prudent practice for the director or senior officer to indicate in such insider report, by way of the "Remarks" section, or otherwise, that he or she participates in an automatic securities purchase plan and that not all purchases under that plan have been included in the report.
- (73) The annual report should include, for acquisitions of securities under a plan not previously reported, disclosure for each acquisition, showing the date of acquisition, the number of securities acquired, and the unit price for each acquisition. The annual report should include comparable information for each specified disposition of securities that has not been reported.
- (84) The annual report that an insider files for acquisitions and specified dispositions under the automatic securities purchase plan in accordance with clause 5.3(b) of the Instrument will reconcile the acquisitions under the plan with other acquisitions or dispositions by the director or senior officer so that the report provides an accurate listing of the director's or senior officer's total holdings. As required by securities legislation, the report filed by the insider must differentiate between securities held directly and indirectly and must indicate the registered holder if securities are held indirectly. In the case of securities acquired pursuant to a plan, the registered holder is often a trustee or plan administrator.

### **6.4 Exemption to the Alternative Reporting Requirement**

- (1) If a director or senior officer relies on the automatic securities purchase plan exemption contained in section 5.1 of the Instrument, the director or senior officer becomes subject, as a consequence of such reliance, to the alternate reporting requirement under section 5.3 to file one or more reports within 90 days of the end of the calendar year (the alternative reporting requirement).
- (2) The principal rationale underlying the alternative reporting requirement is to ensure that 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 reporting requirement becomes due, we are of the

view that it is not necessary to ensure that the alternative report is filed. Accordingly, section 5.5 of the Instrument contains an exemption in this regard.

**4.26.5** **Design and Administration of Plans** - 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 automatic securities purchase plan, 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 which is consistent with this limitation.

**PART 57** **EXISTING EXEMPTIONS**

**5.47.1** **Existing Exemptions** - Insiders can continue to rely on orders of Canadian securities regulatory authorities, subject to their terms and unless the orders provide otherwise, which exempt certain insiders, on conditions, from all or part of the insider reporting requirement, despite implementation of the Instrument.