

Chapter 6

Request for Comments

6.1.1 Request for Comment - Proposed Amendments to NI 55-101 Insider Reporting Exemptions and Companion Policy 55-101CP Insider Reporting Exemptions

REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 55-101 INSIDER REPORTING EXEMPTIONS AND COMPANION POLICY 55-101CP INSIDER REPORTING EXEMPTIONS

Background

The Canadian Securities Administrators (the CSA or we) are publishing for comment proposed amendments to National Instrument 55-101 – *Insider Reporting Exemptions* (NI 55-101) and Companion Policy 55-101CP (55-101CP). Additional information on the proposed instrument, required for publication in Ontario, can be found in the form of notice published in the OSC Bulletin or on its Website at www.osc.gov.on.ca.

NI 55-101 and 55-101CP provide exemptions from the obligation to file insider reports under Canadian securities legislation where the policy reasons for insider reporting do not apply. The CSA adopted NI 55-101 in 2001 to make certain routine exemptions from the insider reporting requirement available automatically. We amended NI 55-101 in 2005 to add some additional routine exemptions.

We believe the recent amendments to NI 55-101 and 55-101CP have been successful. The most significant amendment introduced a new exemption for senior officers based on the CSA title inflation initiative. This amendment codified relief that CSA members had previously granted on an exemptive relief basis a number of times since 2002. The amendments also included several important enhancements to the existing exemption in NI 55-101 relating to automatic securities purchase plans.

Current amendments (Phase 1)

Since the recent amendments, we have received comments from a number of issuers about the record-keeping requirements in Part 4 of NI 55-101. These issuers have indicated that the present record-keeping requirements are unduly onerous, particularly for larger issuers that have a large number of subsidiaries. They have also expressed concern that, even after the most recent amendments based on the title inflation initiative, Canadian securities legislation continues to require too many persons to file insider reports, particularly when compared to the requirements of various foreign jurisdictions.

In view of these comments and further consideration of these requirements, we are proposing to delete the record-keeping requirements in Part 4 of NI 55-101 and instead include these record-keeping functions as an example of a best practice in 55-101CP. We recognize that issuers may choose to adopt different record-keeping practices that are tailored to their particular circumstances.

We are publishing an amending instrument for NI 55-101 and black-lined versions of NI 55-101 and CP 55-101 (Appendices A, B and C). Because of differences in the current insider reporting requirements, Part 3 of NI 55-101 does not apply in Quebec. The definition of “ineligible insider” and section 5.2 of NI 55-101 are also different in Quebec than in other provinces. If certain amendments proposed to the legislation in Quebec come into force before the proposed amendment to NI 55-101, the final form of NI 55-101 may include consequential amendments to address these changes.

Proposed future amendments (Phase 2)

The currently proposed changes to NI 55-101 and 55-101 CP are an interim step. As part of the CSA’s efforts to harmonize and streamline securities legislation, the CSA plan to adopt harmonized insider reporting requirements across Canada. We expect to do this by amending NI 55-101 to include the insider reporting requirements as well as appropriate exemptions.

As part of this initiative, we will review whether the current insider reporting requirements are appropriate or whether the insider reporting system would be more effective if it focused the reporting obligation on a smaller group of insiders. In addition, we may also consider accelerating the time frames for filing insider reports as we improve the viability of the System for Electronic

Disclosure by Insiders (SEDI). For example, as discussed above, a number of issuers have expressed the concern that our current insider reporting rules require too many individuals to file insider reports. Although NI 55-101 now generally exempts insiders who do not routinely have access to material information about the reporting issuer before it is publicly disclosed and who may not therefore be considered “true” insiders, the number of insiders required to file reports can still be substantial. However, reducing the number of insiders required to file reports would further decrease the amount of information in the market about trades by those insiders.

We plan to consider these issues further and conduct research that will compare our current insider reporting requirements with those in other countries. This will help us to determine whether we can reduce the regulatory burden by requiring a smaller group of insiders to file insider reports, without compromising the market information that the insider reports provide or the objective of deterring improper insider trading.

Before we adopt the national insider reporting requirements, we will seek input from people who file insider reports and those who use the information provided by the reports.

Substance and purpose of proposed amendments

Proposed changes to NI 55-101

We propose to make three substantive changes to NI 55-101:

1. *Definition of major subsidiary*

The definition of “major subsidiary” in section 1.1 of NI 55-101 will be changed to increase the relevant percentages from 10 to 20%. This change means that a subsidiary would be a major subsidiary of a reporting issuer only if its assets are 20% or more of the consolidated assets of the reporting issuer or its revenues are 20% or more of the consolidated revenues of the reporting issuer. This change may increase the number of insiders able to rely on the exemptions in Parts 2 and 3 of NI 55-101 because directors or senior officers of a subsidiary that represents more than 10% but less than 20% of the assets or revenues of the reporting issuer will no longer be ineligible insiders (as defined in section 1.1).

2. *Insider lists and policies*

Part 4 – Insider Lists and Policies will be repealed. This change should make it easier for eligible insiders to rely on the exemptions in Parts 2 and 3 of NI 55-101.

Part 4 currently requires

- an insider to notify the reporting issuer that the insider intends to rely on an exemption in Part 2 or 3;
- the reporting issuer to maintain a list of insiders who are relying on exemptions from the insider reporting requirements and a list of insiders who are not relying on the exemptions or file an undertaking with the securities regulatory authorities that it will make those lists available to the regulatory authorities on request; and
- the reporting issuer to advise its insiders that the reporting issuer has established policies and procedures relating to insider trading and that, as part of those policies and procedures, the issuer is required to maintain the lists of insiders referred to above.

As we understand that the current requirements may discourage some insiders from relying on exemptions that they are eligible to use, this change should reduce the number of insiders filing insider reports. However, reporting issuers should consider the detailed best practices for issuers for disclosure and information containment set out in National Policy 51-201 *Disclosure Standards*. 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 as part of their internal policies and procedures relating to insider trading. Reporting issuers should also be aware that some jurisdictions may request additional information, including asking the reporting issuer to prepare and provide a list of insiders, for example in the context of an insider reporting review.

3. *ASPP exemption for stock option grants*

We propose to add a new subsection 5.2(3) to make it clear that certain insiders can rely on the automatic securities purchase plan (ASPP) exemption for grants of stock options and similar securities only if the reporting issuer has publicly disclosed certain information about the grant. This will allow those insiders to defer filing insider reports about these transactions, while still ensuring that the information is available to the market on a timely basis.

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Proposed changes to 55-101CP

55-101CP will be revised in two ways.

1. Part 4 will clarify the best practices for reporting issuers relating to insider lists and trading policies.
2. Part 5 will provide additional guidance on the ASPP exemption.

Alternatives considered

As discussed above, the amendments are intended to clarify NI 55-101 or to streamline requirements. We considered waiting and making these changes as part of a national insider reporting rule. However, the national insider reporting rule will likely not be in place until 2008, so we are proposing to adopt the Phase 1 amendments first to help improve the effectiveness of the current insider reporting system and to reduce the regulatory burden associated with insider reporting.

Request for Comments

We welcome your comments on the proposed amendments to NI 55-101 and the companion policy. In addition to any general comments you may have, we also invite comments on the following specific questions:

1. The exemption in Part 5 of NI 55-101 that allows insiders to defer reporting acquisitions under an automatic securities purchase plan is currently available only to directors and senior officers of the reporting issuer or a subsidiary of the reporting issuer. Should we make this exemption available to persons who own or control more than 10% of the voting securities of a reporting issuer? For example, this would allow these persons to participate in a dividend reinvestment plan and report on the additional shares they acquire in this way within 90 days of the end of the calendar year. If so, should there be limits on the number or percentage of securities that the insider can acquire before being required to file a report?
2. We are proposing to let insiders who are executive officers or directors of a reporting issuer rely on the ASPP exemption in section 5.1 of NI 55-101 for the acquisition of stock options or similar securities granted to the insider if the reporting issuer has previously disclosed in a press release filed on SEDAR the existence and material terms of the grant.
 - (a) Could the same result be achieved by requiring the reporting issuer to file a notice on SEDAR, rather than issuing a press release?
 - (b) In the future, rather than require issuers to file a press release on SEDAR, should we enhance the System for Electronic Disclosure by Insiders (SEDI) to allow reporting issuers to disclose grants of stock options and issuer derivatives like deferred share units, restricted share awards and long term incentive plan units in a report of the issuer? This report could be analogous to the "issuer event" report required under section 2.4 of National Instrument 55-102 SEDI.
3. The current concern in the United States about options backdating illustrates that the market is keenly interested in the timing of stock option grants. We understand that some investors time their own market purchases of securities of an issuer based on option grants to insiders that have been publicly disclosed. We believe that stock options or similar securities granted to executive officers or directors need to be disclosed on a timely basis – either in an insider report filed on SEDI within 10 days or a press release filed by the issuer on SEDAR. We are willing to allow other insiders to rely on the ASPP exemption for grants of stock options and similar securities, provided the plan under which they are granted meets the definition of an ASPP, the conditions of the exemption are otherwise satisfied, and the insider is not making a discrete investment decision in respect of the grant. Does disclosure of grants of options and issuer derivatives to executive officers and directors provide a greater "signalling" function or "deterrence" value than disclosure of similar grants made to other insiders?

Please submit your comments in writing on or before January 25, 2007. If you are not sending your comments by email, please include a diskette 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

Request for Comments

Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission

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. All comments will also be posted to the BCSC web-site at www.bcsc.bc.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of:

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The text of the proposed amended instrument and companion policy follows or can be found elsewhere on a CSA member website.

October 27, 2006

APPENDIX A

AMENDMENTS TO
NATIONAL INSTRUMENT 55-101 INSIDER REPORTING EXEMPTIONS

1. ***National Instrument 55- 101 Insider Reporting Exemptions is amended by this Instrument.***
2. ***Section 1.1, in paragraphs (a) and (b) of the definition of “major subsidiary”, is amended by deleting “10” and substituting “20”.***
3. ***Sections 2.1, 2.2 and 2.3, are amended by striking “Subject to section 4.1, the” at the beginning of each section and substituting “The”.***
4. ***Section 3.2 is amended by striking “and 4.1”.***
5. ***Part 4 is repealed.***
6. ***Section 5.2 is amended by adding the following after subsection 5.2(2):***
 - (3) An insider who is an executive officer (as defined in National Instrument 51-102 Continuous Disclosure Obligations) or a director of the reporting issuer or of a major subsidiary may not rely on the exemption in section 5.1 for the acquisition of stock options or similar securities granted to the insider unless the reporting issuer has previously disclosed in a news release filed on SEDAR the existence and material terms of the grant, including without limitation
 - (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 insider who is an executive officer or director referred to above,
 - (c) the price at which the options or other securities were issued or granted and the exercise price, and
 - (d) the number and type of securities issuable on the exercise of the options or other securities.
7. ***This amendment comes into force •, 2007.***

APPENDIX B

NATIONAL INSTRUMENT 55-101
INSIDER REPORTING EXEMPTIONS

PART 1 DEFINITIONS

1.1 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,

- (a) the total number of securities of the same type acquired under an automatic securities purchase plan, or under all such plans, 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 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, 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, 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;

“ineligible insider” in relation to a reporting issuer means

- (a) an individual performing the functions of the chief executive officer, the chief operating officer or the chief financial officer for the reporting issuer;
- (b) a director of the reporting issuer;
- (c) a director of a major subsidiary of the reporting issuer;
- (d) a senior officer in charge of a principal business unit, division or function of ~~i) the reporting issuer or ii) a major subsidiary of the reporting issuer;~~
 - i) the reporting issuer or
 - ii) a major subsidiary of the reporting issuer;
- (e) other than in Québec, a person that has direct or indirect beneficial ownership of, control or direction over, or a combination of direct or indirect beneficial ownership of, and control or direction over, securities of the reporting issuer carrying more than 10 percent of the voting rights attached to all the reporting issuer’s outstanding voting securities; or
- (f) in Québec, a person who exercises control over more than 10 percent of a class of shares of the 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;

“insider issuer” in relation to a reporting issuer means an issuer that is an insider of the reporting issuer;

“investment issuer” in relation to an issuer means a reporting 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 senior officer to acquire securities in consideration of an additional lump-sum payment, including, in the case of a dividend or interest reinvestment plan that 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, are 40% 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, are 40% percent or more of the consolidated revenues of the reporting issuer reported on that statement;

“normal course issuer bid” means

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

“specified disposition of securities” means a disposition or transfer of securities under 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 2 EXEMPTIONS FOR CERTAIN DIRECTORS AND SENIOR OFFICERS

2.1 Reporting Exemption (Certain Directors) – ~~Subject to section 4.1, the~~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; and
- (b) is not an ineligible insider in relation to the reporting issuer.

2.2 Reporting Exemption (Certain Senior Officers) – ~~Subject to section 4.1, the~~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) 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
- (b) is not an ineligible insider in relation to the reporting issuer.

2.3 Reporting Exemption (Certain Insiders of Investment Issuers) – ~~Subject to section 4.1, the~~The insider reporting requirement does not apply to a director or senior officer of an insider issuer, or a director or senior officer of a subsidiary of the insider issuer, in respect of securities of an investment issuer if the director or senior 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 an ineligible insider in relation to the investment issuer.

PART 3 EXEMPTION FOR DIRECTORS AND SENIOR OFFICERS OF AFFILIATES OF INSIDERS OF A REPORTING ISSUER

3.1 Québec – This Part does not apply in Québec.

3.2. Reporting Exemption – Subject to section ~~3.3 and 4.1,3.3~~, 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.

3.3 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 ineligible insider in relation to the reporting issuer; or
- (c) is a director or senior officer of an issuer 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 INSIDER LISTS AND POLICIES~~PART 4 [Repealed •, 2007]

4.1 Insider Lists and Policies – An insider of a reporting issuer may rely on an exemption contained in Part 2 or Part 3 if

- (a) the insider has advised the reporting issuer that the insider intends to rely on the exemption, and
- (b) the reporting issuer has advised the insider that the reporting issuer has established policies and procedures relating to 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, and will, as part of such policies and procedures, maintain:
 - (i) a list of all insiders of the reporting issuer exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2; and
 - (ii) a list of all insiders of the reporting issuer not exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2.

4.2 Alternative to Lists – Despite section 4.1, an insider of a reporting issuer may rely on an exemption contained in Part 2 or Part 3 if

- (a) the insider has advised the reporting issuer that the insider intends to rely on the exemption, and
- (b) the reporting issuer has advised the insider that the reporting issuer has established policies and procedures relating to 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, and the reporting issuer has filed 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
 - (i) a list of all insiders of the reporting issuer exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2; and
 - (ii) a list of all insiders of the reporting issuer not exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2.

PART 5 REPORTING OF ACQUISITIONS UNDER AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Reporting Exemption – Subject to sections 5.2 and 5.3, 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

- (a) the acquisition of securities of the reporting issuer under an automatic securities purchase plan, other than the 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.

5.2 Limitation

- (1) Other than in Québec, the exemption in section 5.1 is not available to an insider described in clause (e) of the definition of "ineligible insider".
- (2) In Québec, the exemption in section 5.1 is not available to an insider described in clause (f) of the definition of "ineligible insider".
- (3) An insider who is an executive officer (as defined in National Instrument 51-102 *Continuous Disclosure Obligations*) or a director of the reporting issuer or of a major subsidiary may not rely on the exemption in section 5.1 for the acquisition of stock options or similar securities granted to the insider unless the reporting issuer has previously disclosed in a news release filed on SEDAR the existence and material terms of the grant, including without limitation
 - (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 insider who is an executive officer or director referred to above,
 - (c) the price at which the options or other securities were issued or granted and the exercise price, and
 - (d) the number and type of securities issuable on the exercise of the options or other securities.

5.3 Alternative Reporting Requirement

- (1) An insider who relies on the exemption from the insider reporting requirement contained in section 5.1 must 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,
 - (a) for 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 the time required by securities legislation for filing a report disclosing the disposition or transfer; and
 - (b) for 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.
- (2) An insider is exempt from the requirement under subsection (1) if, at the time the report is due,
 - (a) the insider has ceased to be an insider; or
 - (b) the insider is entitled to an exemption from the insider reporting requirements under an exemptive relief order or under an exemption contained in Canadian securities legislation.

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 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 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.

PART 6 REPORTING FOR NORMAL COURSE ISSUER BIDS

- 6.1 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.
- 6.2 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 7 REPORTING FOR CERTAIN ISSUER EVENTS

- 7.1 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.
- 7.2 Reporting Requirement** – An insider who relies on the exemption from the insider reporting requirement contained in section 7.1 must 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 8 EFFECTIVE DATE

- 8.1 Effective Date** – This National Instrument comes into force on April 30, 2005.

APPENDIX C

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

PART 1 PURPOSE

- 1.1 **Purpose** – The purpose of this Companion Policy is to set out the views of the Canadian Securities Administrators (the CSA or we) on various matters relating to National Instrument 55-101 *Insider Reporting Exemptions* (the Instrument).

PART 2 SCOPE OF EXEMPTIONS

- 2.1 **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 3 EXEMPTION FOR CERTAIN DIRECTORS AND SENIOR OFFICERS

3.1 Exemption for Certain Directors

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; and
- (b) is not an ineligible insider.

The exemption in section 2.1 is available for a director of a subsidiary of a reporting issuer but is not available for a director of a reporting issuer or for an insider who otherwise comes within the definition of “ineligible insider”. This is because such insiders, by virtue of their positions, are presumed to 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.

The definition of “ineligible insider” includes an insider who is a director of a “major subsidiary” of the reporting issuer. 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. Accordingly, directors of major subsidiaries are included in the definition of “ineligible insider”.

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.

3.2 Exemption for Certain Senior Officers

- (1) Section 2.2 of the Instrument contains an exemption from the insider reporting requirements for a senior officer of a reporting issuer or a subsidiary of a reporting issuer if the senior officer
 - (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; and
 - (b) is not an ineligible insider.
- (2) The exemption contained in section 2.2 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 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 individuals who are “senior officers”, 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.

3.3 Exemption for Certain Insiders of Investment Issuers

Section 2.3 of the Instrument contains an exemption for a director or senior officer of an “insider issuer” who meets certain criteria in relation to trades in securities of an “investment issuer”. The criteria are as follows:

- the director or senior officer of the insider issuer 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
- the director or senior officer is not otherwise an “ineligible insider” of the investment issuer.

The reference to “material facts or material changes concerning the investment issuer” in the exemption 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 senior 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.

PART 4 INSIDER LISTS AND POLICIES

- (1) ~~Section 4.1 of the Instrument describes certain steps that must be taken before an insider of a reporting issuer may rely on an exemption in Part 2 or Part 3 of the Instrument. Section 4.1 requires~~
- (a) ~~the insider to have advised the reporting issuer that the insider intends to rely on the exemption, and~~
 - (b) ~~the reporting issuer to have advised the insider that the reporting issuer has established policies and procedures relating to 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, and the reporting issuer will, as part of such policies and procedures, maintain:~~
 - (i) ~~a list of insiders of the reporting issuer exempted from the insider reporting requirement by a provision of the Instrument, and~~
 - (ii) ~~a list of insiders of the reporting issuer not exempted by a provision of the Instrument.~~

~~An insider is not required to advise the reporting issuer each time the insider intends to rely on an exemption from the insider reporting requirement. An insider may advise the reporting issuer that the insider intends to rely on a specified exemption from the insider reporting requirement for present and future transactions for so long as the insider otherwise remains entitled to rely on the exemption.~~

~~If an insider has previously advised the reporting issuer that the insider intends to rely on an exemption that is substantially similar to an exemption contained in the Instrument, such as an exemption contained in the previous version of the Instrument or an exemption contained in an exemptive relief order, we would consider that this previous notification constitutes notification for the purposes of the condition in section 4.1 of the Instrument. Accordingly, it would not be necessary for an insider in these circumstances to again notify the reporting issuer after the Instrument comes into force.~~

~~If a reporting issuer advises an insider that the reporting issuer will maintain the lists described in section 4.1, but the reporting issuer subsequently fails to do so, we would accept that continued reliance by the insider on the exemptions would be reasonable so long as the insider did not know and could not reasonably be expected to know that the reporting issuer had failed to maintain the necessary lists.~~

- (2) ~~As an alternative to maintaining the lists described in subparagraphs 4.1(b) (i) and (ii) 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 4.1(b) (i) and (ii) as at the time of the request.~~

~~The principal rationale behind the requirement to maintain 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 are in fact entitled to rely on the exemption. If a reporting issuer determines that it is not necessary to maintain such lists as part of its own policies and procedures relating to insider trading, and is able to prepare and make available such lists promptly upon request, the rationale behind the list requirement would be satisfied.~~

- (3) ~~Sections 4.1 and 4.2 of the Instrument require (as a condition to the availability of the exemptions in Parts 2 and 3) that a reporting issuer establish and maintain certain policies and procedures relating to insider trading. The Instrument does not prescribe the content of such policies and procedures. It merely requires that such policies and procedures exist and that the issuer maintain the lists described in subparagraphs 4.1(b)(i) and (ii) or file an undertaking in relation to such lists.~~

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.

~~The disclosure standards described in National Policy 51-201 *Disclosure Standards* represent best practices recommended by the CSA. An issuer's policies and procedures need not be consistent with National Policy 51-201 in order for the exemptions in Parts 2 and 3 of the Instrument to be available.~~

Reporting issuers should also 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 and help them to ensure that insiders are not violating insider trading prohibitions. Before •, 2007, it was a condition of the exemptions in Parts 2 and 3 that the reporting issuer maintain lists of insiders relying on exemptions and of those insiders who were not exempt from the insider reporting requirement. Alternatively, the issuer could undertake to provide these lists promptly after receiving a request for them from a securities regulatory authority. This is no longer a condition for an insider to be able to rely on the exemptions. However, some jurisdictions may request additional information, including asking the reporting issuer to prepare and provide a list of insiders, for example in the context of an insider reporting review.

PART 5 AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Automatic Securities Purchase Plans

- (1) 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 (an ASPP).
- (2) 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.
- (3) If a plan participant acquires securities under an ASPP and wishes to report the acquisitions on a deferred basis in reliance on the exemption in section 5.1 of the Instrument, the plan participant is required to file an alternative form of report(s) as follows:

- (a) in the case of acquisitions of securities that are not disposed of or transferred during the year (other than as part of a “specified disposition of securities”, discussed below) the participant must file a report disclosing all such acquisitions annually no later than 90 days after the end of the calendar year; and
 - (b) in the case of acquisitions of securities that are disposed of or transferred during the year (other than as part of a “specified disposition of securities”, discussed below) the participant must file a report disclosing the acquisition and disposition within the normal time frame for filing insider reports, as contemplated by clause 5.3(1)(a) of the Instrument.
- (4) The ASPP exemption allows insiders who acquire or dispose of securities of the reporting issuer under an ASPP to file insider reports on a deferred basis when the insider is not making a discrete investment decision (as discussed below in subsection 5.2(3)) for the acquisition or disposition under the ASPP. In the past, issuers and insiders have asked whether the ASPP exemption is available for grants of stock options and similar securities. The CSA are of the view that an insider can rely on this exemption for grants of stock options and similar securities provided the plan under which they are granted meets the definition of an ASPP, the conditions of the exemption are otherwise satisfied, and the insider is not making a discrete investment decision in respect of the grant or acquisition.

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 an insider 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, the insider may be able to make a discrete investment decision in respect of the grant or acquisition. In these circumstances, the CSA does not believe that information about the grant should be disclosed to the market on a deferred basis.

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 believe information about options or similar securities granted to this group of insiders is important to the market. As a result, subsection 5.2(3) of the Instrument provides that a plan participant who is in one of these categories cannot rely on the ASPP exemption for stock option grants or similar acquisitions of securities **unless** the reporting issuer has disclosed the material terms of the grant in a news release filed on SEDAR before the time the insider would have been required to file an insider report. If the reporting issuer has disclosed this information, the insider still must file the alternative form of report described in (3) above. This helps to ensure that the market has information on a timely basis about the options or other securities granted to insiders who may have participated in the decision to grant the securities, even though the insider may not file an insider report disclosing the grant until a later date.

5.2 Specified Dispositions of Securities

- (1) A disposition or transfer of securities acquired under an ASPP is a “specified disposition of securities” if
 - (a) the disposition or transfer is incidental to the operation of the ASPP 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 ASPP 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 ASPP 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 ASPP 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 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 represent a discrete investment decision (other than the initial decision to enter into the plan in question).
The reference to “discrete investment decision” in section 5.4 is intended to reflect a principles-based limitation on the exemption for permitted dispositions under an ASPP. Accordingly, in interpreting this term, you should consider the principles underlying the insider reporting requirement – deterring insiders from

profiting from material undisclosed information and signalling insider views as to the prospects of an issuer – and the rationale for the exemptions from this requirement.

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) 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 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 it meets the criteria contained in clause 5.4(b) of the Instrument.

5.3 Reporting Requirements

- (1) Subsection 5.3(1) of the Instrument requires an insider who relies on the exemption for securities acquired under an ASPP 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 ASPP, 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 an ASPP, or under all ASPPs, 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. Similarly, an insider may report all specified dispositions of securities in a calendar year in acceptable summary form.
- (2) If securities acquired under an ASPP are disposed of or transferred, other than pursuant to a specified disposition of securities, and the acquisitions of these securities have not been previously disclosed in a report, the insider report should 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 should 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 ASPP and that not all purchases under that plan have been included in the report.
- (3) The annual report that an insider files for acquisitions and specified dispositions under the ASPP in accordance with clause 5.3(1)(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.

5.4 Exemption to the Alternative Reporting Requirement

- (1) If a director or senior officer relies on the ASPP exemption contained in section 5.1 of the Instrument, the director or senior officer becomes subject, as a consequence of such reliance, to the alternative reporting requirement under subsection 5.3(1) 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, subsection 5.3(2) of the Instrument contains an exemption in this regard.

5.5 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 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 which is consistent with this limitation.

PART 6 EXISTING EXEMPTIONS

6.1 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.

APPENDIX D

ADDITIONAL NOTICE REQUIREMENTS: ONTARIO

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.