

Nova Scotia Securities Commission

Rule 55-104

Insider Reporting Requirements and Exemptions

-and-

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*

-and-

Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions*

WHEREAS:

1. Pursuant to section 150 of the Securities Act, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions*, copies of which are attached hereto and are hereinafter called the "Rule" and "Companion Policy" respectively, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication in the Royal Gazette or the Commission's website, issues the Companion Policy as a policy statement of the Commission; and
- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect

on **April 30, 2010**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 12 day of February, 2010.

"H. Leslie O'Brien"
H. Leslie O'Brien, Q.C.

"R. Daren Baxter"
R. Daren Baxter

Attachments

National Instrument 55-104
Insider Reporting Requirements and Exemptions

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions and interpretation

(1) In this Instrument

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

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

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

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

“CEO” means a chief executive officer and any other individual who acts as chief executive officer for an issuer or acts in a similar capacity for the issuer;

“CFO” means a chief financial officer and any other individual who acts as chief financial officer for an issuer or acts in a similar capacity for the issuer;

“compensation arrangement” includes, but is not limited to, an arrangement, whether or not set out in any formal document and whether or not applicable to only one individual, under which cash, securities or related financial instruments, including, for greater certainty, options, stock appreciation rights, phantom shares,

restricted shares or restricted share units, deferred share units, performance units or performance shares, stock, stock dividends, warrants, convertible securities, or similar instruments, may be received or purchased as compensation for services rendered, or otherwise in connection with holding an office or employment with a reporting issuer or a subsidiary of a reporting issuer;

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

“COO” means a chief operating officer and any other individual who acts as chief operating officer for an issuer or acts in a similar capacity for the issuer;

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

“derivative”

- (a) means, other than in New Brunswick, the Northwest Territories, Nunavut, Ontario, Prince Edward Island, Québec and the Yukon Territory, an instrument, agreement, security or exchange contract, the market price, value or payment obligations of which is derived from, referenced to, or based on an underlying security, interest, benchmark or formula;
- (b) in New Brunswick, the Northwest Territories, Nunavut, Ontario, Prince Edward Island and the Yukon Territory, has the same meaning as in securities legislation; and
- (c) in Québec, has the same meaning as in *The Derivatives Act*;

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

“economic exposure” in relation to an issuer

- (a) means, other than in Ontario, the extent to which the economic or financial interests of a person or company are aligned with the trading price of securities of the issuer or the economic or financial interests of the issuer;
- (b) in Ontario, has the same meaning as in securities legislation;

“economic interest” in a security or an exchange contract

- (a) means, other than in British Columbia, New Brunswick, the Northwest Territories, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory,
 - (i) a right to receive or the opportunity to participate in a reward, benefit or return from a security or an exchange contract, or
 - (ii) exposure to a risk of a financial loss in respect of a security or an exchange contract;
- (b) in British Columbia, New Brunswick, the Northwest Territories, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory, has the same meaning as in securities legislation;

“exchange contract”

- (a) means, other than in Alberta, British Columbia, New Brunswick and Saskatchewan, a futures contract or an option that meets both of the following requirements:
 - (i) its performance is guaranteed by a clearing agency; and
 - (ii) it is traded on an exchange pursuant to standardized terms and conditions set out in that exchange's by-laws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange;
- (b) in Alberta, British Columbia, New Brunswick and Saskatchewan, has the same meaning as in securities legislation;

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

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

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

“insider reporting requirement” means

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

- (b) a requirement to file insider reports under any provisions of Canadian securities legislation substantially similar to Parts 3 and 4; and
- (c) a requirement to file an insider profile under NI 55-102;

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

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

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

“major subsidiary” means a subsidiary of an issuer if

- (a) the assets of the subsidiary, as included in the issuer’s most recent annual audited or interim balance sheet, or, for a period relating to a financial year beginning on or after January 1, 2011, a statement of financial position, are 30 per cent or more of the consolidated assets of the issuer reported on that balance sheet or statement of financial position, as the case may be, or
- (b) the revenue of the subsidiary, as included in the issuer’s most recent annual audited or interim income statement, or, for a period relating to a financial year beginning on or after January 1, 2011, a statement of comprehensive income, is 30 per cent or more of the consolidated revenue of the issuer reported on that statement;

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

“NI 55-102” means National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*;

“normal course issuer bid” means

- (a) an issuer bid that is made in reliance on the exemption, contained in securities legislation from requirements relating to issuer bids, that is available if the number of securities acquired by the issuer within a period of twelve months does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period, or
- (b) a normal course issuer bid as defined in the rules or policies of the Toronto Stock Exchange, the TSX Venture Exchange or an exchange that is a

recognized exchange, as defined in National Instrument 21-101 *Marketplace Operation*, and that is conducted in accordance with the rules or policies of that exchange;

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

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

“related financial instrument”

- (a) means, other than in British Columbia, New Brunswick, the Northwest Territories, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory,
 - (i) an instrument, agreement, security or exchange contract the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or,
 - (ii) any other instrument, agreement, or understanding that affects, directly or indirectly, a person or company’s economic interest in a security or an exchange contract;
- (b) in British Columbia, New Brunswick, the Northwest Territories, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory, has the same meaning as in securities legislation;

“reporting insider” means an insider of a reporting issuer if the insider is

- (a) the CEO, CFO or COO of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer;
- (b) a director of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer;
- (c) a person or company responsible for a principal business unit, division or function of the reporting issuer;
- (d) a significant shareholder of the reporting issuer;
- (e) a significant shareholder based on post-conversion beneficial ownership of the reporting issuer’s securities and the CEO, CFO, COO and every director of the significant shareholder based on post-conversion beneficial ownership;

- (f) a management company that provides significant management or administrative services to the reporting issuer or a major subsidiary of the reporting issuer, every director of the management company, every CEO, CFO and COO of the management company, and every significant shareholder of the management company;
- (g) an individual performing functions similar to the functions performed by any of the insiders described in paragraphs (a) to (f);
- (h) the reporting issuer itself, if it has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security; or
- (i) any other insider that
 - (i) in the ordinary course receives or has access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed; and
 - (ii) directly or indirectly exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer;

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

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

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

- (2) **Affiliate** – In this Instrument, an issuer is an affiliate of another issuer if
 - (a) one of them is the subsidiary of the other, or
 - (b) each of them is controlled by the same person or company.

- (3) **Control** – In this Instrument, a person or company (first person or company) is considered to control another person or company (second person or company) if
- (a) the first person or company beneficially owns or has control or direction over, whether direct or indirect, securities of the second person or company carrying votes which, if exercised, would entitle the first person or company to elect a majority of the directors of the second person or company, unless that first person or company holds the voting securities only to secure an obligation,
 - (b) the second person or company is a partnership, other than a limited partnership, and the first person or company holds more than 50 per cent of the interests of the partnership, or
 - (c) the second person or company is a limited partnership and the general partner of the limited partnership is the first person or company.
- (4) **Post-conversion beneficial ownership** – In this Instrument, a person or company is considered to have, as of a given date, post-conversion beneficial ownership of a security, including an unissued security, if the person or company is the beneficial owner of a security convertible into the security within 60 days following that date or has a right or obligation permitting or requiring the person or company, whether or not on conditions, to acquire beneficial ownership of the security within 60 days, by a single transaction or a series of linked transactions.
- (5) **Significant shareholder based on post-conversion beneficial ownership** – In this Instrument, a person or company is a significant shareholder based on post-conversion beneficial ownership if the person or company is not a significant shareholder but the person or company has beneficial ownership of, post-conversion beneficial ownership of, control or direction over, whether direct or indirect, or any combination of beneficial ownership of, post-conversion beneficial ownership of, or control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 per cent of the voting rights attached to all the issuer's outstanding voting securities, calculated in accordance with subsections (6) and (7).
- (6) For the purposes of the calculation in subsection (5), an issuer's outstanding voting securities include securities in respect of which a person or company has post-conversion beneficial ownership.
- (7) For the purposes of the calculation in subsections (4) and (5), a person or company may exclude any securities held by the person or company as underwriter in the course of a distribution.

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

- (1) The following persons and companies are designated or determined to be insiders of an issuer:
 - (a) a significant shareholder of the issuer based on post-conversion beneficial ownership of the issuer's securities;
 - (b) a management company that provides significant management or administrative services to the issuer or a major subsidiary of the issuer, and every director, officer and significant shareholder of the management company; and
 - (c) if the issuer is an income trust, every director, officer and significant shareholder of a principal operating entity of the issuer.
- (2) **Issuer as insider of reporting issuer** – If an issuer (the first issuer) becomes an insider of a reporting issuer (the second issuer), the CEO, CFO, COO and every director of the first issuer are designated or determined to be an insider of the second issuer and must file insider reports in accordance with section 3.5 in respect of transactions relating to the second issuer that occurred in the previous six months or for such shorter period that the individual was a CEO, CFO, COO or director of the first issuer.
- (3) **Reporting issuer as insider of other issuer** – If a reporting issuer (the first issuer) becomes an insider of another issuer (the second issuer), the CEO, CFO, COO and every director of the second issuer is designated or determined to be an insider of the first issuer and must file insider reports in accordance with section 3.5 in respect of transactions relating to the first issuer that occurred in the previous six months or for such shorter period that the individual was a CEO, CFO, COO or director of the second issuer.

1.3 **Reliance on Reported Outstanding Shares**

- (1) In determining the securityholding percentage of a person or company in a class of securities for the purposes of the definition “significant shareholder” and in determining if the person or company is a significant shareholder based on post-conversion beneficial ownership, the person or company may rely upon information most recently filed by the issuer of the securities in a material change report or under section 5.4 of National Instrument 51-102 *Continuous Disclosure Obligations*, whichever contains the most recent relevant information.
- (2) Subsection (1) does not apply if the person or company has knowledge both
 - (a) that the information filed is inaccurate or has changed; and
 - (b) of the correct information.

PART 2 APPLICATION

- 2.1 **Insider reporting requirements (insiders of Ontario reporting issuers)** – In Ontario, the insider reporting requirements in sections 3.2 and 3.3 do not apply to an insider of a reporting issuer under the *Securities Act* (Ontario).

Note: In Ontario, requirements similar to the insider reporting requirements in sections 3.2 and 3.3 of this Instrument are contained in section 107 of the *Securities Act* (Ontario).

- 2.2 **Reporting deadline** – In Ontario, for the purposes of subsection 107(2) of the *Securities Act* (Ontario), in the case of a transaction occurring after October 31, 2010, the prescribed period is within five days of any change in the beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer or any interest in, or right or obligation associated with, a related financial instrument.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

- 3.1 **Reporting requirement** – An insider must file insider reports under this Part and Part 4 in respect of a reporting issuer if the insider is a reporting insider of the reporting issuer.
- 3.2 **Initial report** – A reporting insider must file an insider report in respect of a reporting issuer, within 10 days of becoming a reporting insider, disclosing the reporting insider's
- (a) beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer, and
 - (b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.
- 3.3 **Subsequent report** – A reporting insider must within five days of any of the following changes file an insider report in respect of a reporting issuer disclosing a change in the reporting insider's
- (a) beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer, or
 - (b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.
- 3.4 **Reporting requirements in connection with convertible or exchangeable securities** – For greater certainty, a reporting insider who exercises an option, warrant or other convertible or exchangeable security must file, within five days of the exercise, separate insider reports in accordance with section 3.3 disclosing the resulting change in the reporting insider's beneficial ownership of, or control or direction over, whether direct or indirect, each of

- (a) the option, warrant or other convertible or exchangeable security, and
- (b) the common shares or other underlying securities.

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

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 Other agreements, arrangements or understandings

- (1) If a reporting insider of a reporting issuer enters into, materially amends, or terminates an agreement, arrangement or understanding described in subsection (2), the reporting insider must, within five days of this event, file an insider report in respect of the reporting issuer in accordance with section 4.3.
- (2) An agreement, arrangement or understanding must be reported under subsection (1) in an insider report in respect of a reporting issuer if
 - (a) the agreement, arrangement or understanding has the effect of altering, directly or indirectly, the reporting insider's economic exposure to the reporting issuer;
 - (b) the agreement, arrangement or understanding involves, directly or indirectly, a security of the reporting issuer or a related financial instrument involving a security of the reporting issuer; and
 - (c) the reporting insider is not otherwise required to file an insider report in respect of this event under Part 3 or any corresponding provision of Canadian securities legislation.

4.2 **Report of prior agreements, arrangements or understandings** – A reporting insider must, within 10 days of becoming a reporting insider of a reporting issuer, file an insider report in accordance with section 4.3 in respect of the reporting issuer if

- (a) the reporting insider, prior to the date the reporting insider most recently became a reporting insider, entered into an agreement, arrangement or understanding in respect of which the reporting insider would have been

required to file an insider report under section 4.1 if the agreement, arrangement or understanding had been entered into on or after the date the reporting insider most recently became a reporting insider, and

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

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

PART 5 EXEMPTION FOR AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Interpretation

- (1) In this Part, a reference to a director or officer means a director or officer who is
 - (a) a director or officer of a reporting issuer and a reporting insider of the reporting issuer, or
 - (b) a director or officer of a subsidiary of a reporting issuer and a reporting insider of the reporting issuer.
- (2) In this Part, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer.
- (3) In this Part, a disposition or transfer of securities acquired under an automatic securities purchase plan is a specified disposition of securities if
 - (a) the disposition or transfer is incidental to the operation of the automatic securities purchase plan and does not involve a discrete investment decision by the director or officer; or
 - (b) the disposition or transfer is made to satisfy a tax withholding obligation arising from the distribution of securities under the automatic securities purchase plan and either
 - (i) the director or officer has elected that the tax withholding obligation will be satisfied through a disposition of securities, has communicated this election to the reporting issuer or the plan administrator at least 30 days before the disposition and this election is irrevocable as of the 30th day before the disposition; or
 - (ii) the director or officer has not communicated an election to the reporting issuer or the plan administrator and, in accordance with the terms of the plan, the reporting issuer or the plan administrator is required to sell securities automatically to satisfy the tax

withholding obligation.

5.2 Reporting exemption

- (1) The insider reporting requirement does not apply to a director or officer for an acquisition or disposition of securities described in subsection (2) if the director or officer complies with the alternative reporting requirement in section 5.4.
- (2) The exemption in subsection (1) applies to
 - (a) an acquisition of securities of the reporting issuer under an automatic securities purchase plan, other than an acquisition of securities under a lump-sum provision of the plan; or
 - (b) a specified disposition of securities of the reporting issuer under an automatic securities purchase plan.

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

5.4 Alternative reporting requirement

- (1) A director or officer is exempt under section 5.2 from the insider reporting requirement if the insider files an insider report within the time period described in subsection (2) disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition and each specified disposition of a security under an automatic securities purchase plan that has not previously been disclosed by or on behalf of the director or officer.
- (2) The deadline for filing the insider report under subsection (1) is,
 - (a) in the case of any securities acquired under the automatic securities purchase plan that have been disposed of or transferred, other than securities that have been disposed of or transferred as part of a specified disposition of securities, within five days of the disposition or transfer; and
 - (b) in the case of any securities acquired under the automatic securities purchase plan during a calendar year that have not been disposed of or transferred, and any securities that have been disposed of or transferred as part of a specified disposition of securities, on or before March 31 of the next calendar year.
- (3) Subsection (1) does not apply to a director or officer if, at the time the insider report described in subsection (1) is due,
 - (a) the director or officer is not a reporting insider; or

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

PART 6 EXEMPTION FOR CERTAIN ISSUER GRANTS

6.1 Interpretation

- (1) In this Part, a reference to a director or officer means a director or officer who is
 - (a) a director or officer of a reporting issuer and a reporting insider of the reporting issuer, or
 - (b) a director or officer of a subsidiary of a reporting issuer and a reporting insider of the reporting issuer.
- (2) In this Part, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer.
- (3) In this Part, a disposition or transfer of a security acquired under a compensation arrangement is a specified disposition of a security if
 - (a) the disposition or transfer is incidental to the operation of the compensation arrangement and does not involve a discrete investment decision by the director or officer; or
 - (b) the disposition or transfer is made to satisfy a tax withholding obligation arising from the distribution of a security under the compensation arrangement and either
 - (i) the director or officer has elected that the tax withholding obligation will be satisfied through a disposition of securities, has communicated this election to the reporting issuer or the administrator of the compensation arrangement at least 30 days before the disposition and this election is irrevocable as of the 30th day before the disposition; or
 - (ii) the director or officer has not communicated an election to the reporting issuer or the administrator of the compensation arrangement and, in accordance with the terms of the arrangement, the reporting issuer or the administrator is required to sell securities automatically to satisfy the tax withholding obligation.

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

- (a) the reporting issuer has previously disclosed the existence and material terms of the compensation arrangement in an information circular or other public document filed on SEDAR;
- (b) in the case of an acquisition of securities, the reporting issuer has previously filed in respect of the acquisition an issuer grant report on SEDI in accordance with section 6.3; and
- (c) the director or officer complies with the alternative reporting requirement in section 6.4.

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

- (a) the date the option or other security was issued or granted;
- (b) the number of options or other securities issued or granted to each director or officer;
- (c) the price at which the option or other security was issued or granted and the exercise price;
- (d) the number and type of securities issuable on the exercise of the option or other security; and
- (e) any other material terms that have not been previously disclosed or filed in a public filing on SEDAR.

6.4 Alternative reporting requirement

- (1) A director or officer is exempt under section 6.2 from the insider reporting requirement if the insider files an insider report within the time period described in subsection (2) disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition and each specified disposition of a security under a compensation arrangement that has not previously been disclosed by or on behalf of the director or officer.
- (2) The deadline for filing the insider report under subsection (1) is
 - (a) in the case of any security acquired under the compensation arrangement that has been disposed of or transferred, other than a security that has been disposed of or transferred as part of a specified disposition of a security, within five days of the disposition or transfer; and
 - (b) in the case of any security acquired under the compensation arrangement during a calendar year that has not been disposed of or transferred, and any security that has been disposed of or transferred as part of a specified disposition of a security, on or before March 31 of the next calendar year.

- (3) Subsection (1) does not apply to a director or officer if, at the time the insider report described in subsection (1) is due,
- (a) the director or officer is not a reporting insider; or
 - (b) the director or officer is exempt from the insider reporting requirement.

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

- 7.1 **Reporting exemption for normal course issuer bids** – The insider reporting requirement does not apply to an issuer for an acquisition of a security of its own issue by the issuer under a normal course issuer bid if the issuer complies with the alternative reporting requirement in section 7.2.
- 7.2 **Reporting requirement** – An issuer who relies on the exemption in section 7.1 must file an insider report disclosing each acquisition of securities by it under a normal course issuer bid within 10 days of the end of the month in which the acquisition occurred.
- 7.3 **General exemption for other transactions that have been otherwise disclosed** – The insider reporting requirement does not apply to an issuer in connection with a transaction, other than a normal course issuer bid, involving a security of its own issue if the existence and material terms of the transaction have been generally disclosed in a public filing on SEDAR.

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

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

PART 9 GENERAL EXEMPTIONS

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

- 9.2 **Reporting exemption (non-reporting insiders)** – The insider reporting requirement does not apply to an insider of an issuer if the insider is not a reporting insider of that issuer.
- 9.3 **Reporting exemption (certain insiders of investment issuers)** – The insider reporting requirement does not apply to a director or officer of a significant shareholder, or a director or officer of a subsidiary of a significant shareholder, in respect of securities of an investment issuer or a related financial instrument involving a security of the investment issuer if the director or officer
- (a) does not in the ordinary course receive or have access to information as to material facts or material changes concerning the investment issuer before the material facts or material changes are generally disclosed; and
 - (b) is not a reporting insider of the investment issuer in any capacity other than as a director or officer of the significant shareholder or a subsidiary of the significant shareholder.
- 9.4 **Reporting exemption (nil report)** – The insider reporting requirement does not apply to a reporting insider if the reporting insider
- (a) does not have any beneficial ownership of, or control or direction over, whether direct or indirect, a security of the issuer;
 - (b) does not have any interest in, or right or obligation associated with, a related financial instrument involving a security of the issuer;
 - (c) has not entered into any agreement, arrangement or understanding as described in section 4.1; and
 - (d) is not a significant shareholder based on post-conversion beneficial ownership.
- 9.5 **Reporting exemption (corporate group)** – The insider reporting requirement does not apply to a reporting insider if
- (a) the reporting insider is a subsidiary or other affiliate of another reporting insider (the affiliated reporting insider); and
 - (b) the affiliated reporting insider has filed an insider report in respect of the reporting issuer that discloses substantially the same information as would be contained in an insider report filed by the reporting insider, including details of the reporting insider's
 - (i) beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer; and

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

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

- (a) the reporting insider is an executor, administrator or other person or company who is a representative of the estate (referred to in this section as an executor of the estate), or a director or officer of an executor of the estate;
- (b) the reporting insider is subject to the insider reporting requirement solely because of the reporting insider being an executor or a director or officer of an executor of the estate; and
- (c) another executor or director or officer of an executor of the estate has filed an insider report that discloses substantially the same information as would be contained in an insider report filed by the reporting insider for securities of an issuer beneficially owned or controlled, directly or indirectly, by the estate.

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

- (a) an agreement, arrangement or understanding which does not involve, directly or indirectly,
 - (i) a security of the reporting issuer;
 - (ii) a related financial instrument involving a security of the reporting issuer; or
 - (iii) any other derivative in respect of which the underlying security, interest, benchmark or formula is or includes as a material component a security of the reporting issuer or a related financial instrument involving a security of the reporting issuer;
- (b) a transfer, pledge or encumbrance of a security by a reporting insider for the purpose of giving collateral for a debt made in good faith so long as there is no limitation on the recourse available against the insider for any amount payable under such debt;
- (c) the receipt by a reporting insider of a transfer, pledge or encumbrance of a security of an issuer if the security is transferred, pledged or encumbered as collateral for a debt under a written agreement and in the ordinary course of business of the insider;

- (d) a reporting insider, other than a reporting insider that is an individual, that enters into, materially amends or terminates an agreement, arrangement or understanding which is in the nature of a credit derivative;
- (e) a reporting insider who did not know and, in the exercise of reasonable diligence, could not have known of the alteration to economic exposure described in section 4.1;
- (f) the acquisition or disposition of a security, or an interest in a security, of an investment fund, provided that securities of the reporting issuer do not form a material component of the investment fund's market value; or
- (g) the acquisition or disposition of a security, or an interest in a security, of an issuer that holds directly or indirectly securities of the reporting issuer, if
 - (i) the reporting insider is not a control person of the issuer; and
 - (ii) the reporting insider does not have or share investment control over the securities of the reporting issuer.

PART 10 DISCRETIONARY EXEMPTIONS

10.1 Exemptions from this Instrument

- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 11 EFFECTIVE DATE AND TRANSITION

11.1 **Effective Date** – This Instrument comes into force on April 30, 2010.

11.2 Transition

- (1) Despite sections 3.3 and 3.4, a reporting insider may file an insider report required by either of those sections within 10 days of a change described in those sections if the change relates to a transaction that occurred on or before October 31, 2010.
- (2) Despite section 4.1, a reporting insider may file an insider report required under that section within 10 days of an event described in that section if the event relates

to a transaction that occurred on or before October 31, 2010.

- (3) Despite paragraph 5.4(2)(a), a reporting insider may file an insider report required under that paragraph within 10 days of a disposition or transfer described in that paragraph if the disposition or transfer occurred on or before October 31, 2010.
- (4) Despite paragraph 6.4(2)(a), a reporting insider may file an insider report required under that paragraph within 10 days of a disposition or transfer described in that paragraph if the disposition or transfer occurred on or before October 31, 2010.

Companion Policy 55-104CP
Insider Reporting Requirements and Exemptions

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

- (1) National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the Instrument) sets out the principal insider reporting requirements and exemptions for insiders of reporting issuers.¹
- (2) The purpose of this Policy is to help you understand how the Canadian Securities Administrators (the CSA or we) interpret or apply certain provisions of the Instrument.

1.2 Background to the Instrument

- (1) The Instrument consolidates the principal insider reporting requirements and most exemptions in one location. This will make it easier for issuers and insiders to locate and understand their obligations and will help promote timely and effective compliance.
- (2) The focus of the Instrument is on the substantive legal insider reporting requirements rather than the procedural requirements relating to the filing of insider reports. Issuers and insiders should review National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102) in order to determine their obligations for the filing of insider reports.
- (3) Although the Instrument sets out the principal insider reporting requirements and exemptions for issuers and insiders in Canada, a number of other CSA instruments also contain exemptions from the insider reporting requirements, including
 - (a) National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);
 - (b) National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103);
 - (c) National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101); and
 - (d) National Instrument 71-102 *Continuous Disclosure and Other Exemptions*

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

Relating to Foreign Issuers (NI 71-102).

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

1.3 Policy Rationale for Insider Reporting in Canada

- (1) The insider reporting requirements serve a number of functions. These include deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.
- (2) Insider reporting also helps prevent illegal or otherwise improper activities involving stock options and similar equity-based instruments, including stock option backdating, option repricing, and the opportunistic timing of option grants (spring-loading or bullet-dodging). This is because the requirement for timely disclosure of option grants and public scrutiny of such disclosure will generally limit opportunities for issuers and insiders to engage in improper dating practices.
- (3) Insiders should interpret the insider reporting requirements in the Instrument with these policy rationales in mind and comply with the requirements in a manner that gives priority to substance over form.

1.4 Definitions used in the Instrument

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

This means that, in the jurisdictions specifically excluded from the definition, the definition in the local securities statute applies. However, in the jurisdictions not specifically excluded from the definition, the definition in the Instrument applies.

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

- (2) **Directors and Officers** – Where the Instrument uses the term “directors” or “officers”, insiders of an issuer that is not a corporation must refer to the definitions in securities legislation of “director” and “officer”. The definitions of “director” and “officer” typically include persons acting in capacities similar to

those of a director or an officer of a company or individuals who perform similar functions. Corporate and non-corporate issuers and their insiders must determine, in light of the particular circumstances, which individuals or persons are acting in such capacities for the purposes of complying with the Instrument.

Similarly, the terms “CEO”, “CFO” and “COO” include the individuals that have the responsibilities normally associated with these positions or act in a similar capacity. This determination is to be made irrespective of an individual’s corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

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

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

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

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

For example, an insider with a substantial proportion of his or her personal wealth invested in securities of his or her reporting issuer will be highly exposed to changes in the fortunes of the reporting issuer. By contrast, an insider who does not hold securities of a reporting issuer (and does not participate in a compensation arrangement involving securities of the reporting issuer) will

generally be exposed only to the extent of their salary and any other compensation arrangements provided by the issuer that do not involve securities of the reporting issuer.

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

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

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

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

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

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

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

(7) **Reporting insider** – We developed the term “reporting insider” specifically for the purposes of the insider reporting requirements and exemptions in the Instrument. It allows us to focus the insider reporting requirement on a core group of persons and companies who in some cases are not “insiders” as defined in securities legislation. There are additional obligations and prohibitions on ‘insiders’ as defined in our Acts, such as the important prohibition on illegal insider trading. The concept of reporting insider is discussed in section 3.1 of this Policy.

1.5 References to the term “day” in the Instrument – References in the Instrument to the term “day” mean calendar day (as opposed to business day). This is consistent with how we use this term elsewhere in securities legislation and the statutory interpretation of the term “day” in each of the CSA jurisdictions.

1.6 Persons and companies designated or determined to be insiders – Section 1.2 of the Instrument designates or determines certain persons and companies to be insiders of a reporting issuer. The Instrument uses the terms “designate” and “determine” since these are the terms used in securities legislation in different jurisdictions. The designation or determination is for the purposes of the insider reporting requirements in the Instrument only. However, in many cases, persons and companies designated or determined to be insiders will also be insiders in another capacity. For example, section 1.2 designates or determines officers and directors of a management company that provides significant management or administrative services to a reporting issuer to be insiders of that reporting issuer. These individuals may also be officers and directors of the reporting issuer under the extended definitions of “officer” and “director” which typically include persons acting in capacities similar to those of a director or an officer or

individuals who perform similar functions. The purpose of designating or determining these individuals to be insiders is to clarify these individuals' insider reporting obligations and to avoid uncertainty.

PART 2 APPLICATION

2.1 Application in Ontario – In Ontario, the insider reporting requirements are set out in Part XXI of the Ontario Act. For this reason, sections 3.2 and 3.3 of the Instrument do not apply in Ontario. However, the insider reporting requirements set out in the Instrument and in Part XXI of the Ontario Act are substantially harmonized. Accordingly, in this Policy, we omit separate references to the requirements of the Ontario Act except where it is necessary to highlight a difference between the requirements of the Instrument and the Ontario Act.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1 Concept of reporting insider

- (1) **General** – Subsection 1.1(1) of the Instrument contains the definition of “reporting insider”. The definition represents a principles-based approach to determining which insiders should file insider reports and enumerates a list of insiders whom we think generally satisfy both of the following criteria:
- (i) the insider 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; and
 - (ii) the insider directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer.

In addition to enumerating a list of insiders, the definition also includes, in paragraph (i), a “basket” provision that explicitly states these two criteria. The basket provision articulates the fundamental principle that an insider who satisfies the criteria of routine access to material undisclosed information concerning a reporting issuer and significant influence over the reporting issuer should file insider reports.

- (2) **Interpreting the basket criteria** – The CSA consider that insiders who come within the enumerated list of positions in the definition of reporting insider will generally satisfy the criteria of routine access to material undisclosed information and significant influence over the reporting issuer. We recognize that this may not always be the case for certain positions in the definition and have therefore included an exemption in section 9.3 of the Instrument for directors and officers of significant shareholders based on lack of routine access to material undisclosed information.

If an insider does not fall within any of the enumerated positions, the insider

should consider whether the insider has access to material undisclosed information and has influence over the reporting issuer that is reasonably commensurate with that of one or more of the enumerated positions. If the insider satisfies both of these criteria, the insider will fall within the basket provision of the reporting insider definition.

- (3) **Meaning of significant power or influence** – In determining whether an insider satisfies the significant influence criterion, the insider should consider whether the insider exercises, or has the ability to exercise, significant influence over the business, operations, capital or development of the issuer that is reasonably comparable to that exercised by one or more of the enumerated positions in the definition.

Certain positions or relationships with the issuer may give rise to reporting insider status in the case of certain issuers but not others, depending on the importance of the position or relationship to the business, operations, capital or development of the particular issuer. Similarly, the importance of a position or relationship to an issuer may change over time. For example, the directors and the CEO, CFO and COO of a 20 per cent subsidiary (i.e. not a “major subsidiary”, as defined in the Instrument) who are not reporting insiders for any other reason may be reporting insiders prior to and during a significant business acquisition or reorganization, or a market moving announcement.

- (4) **Exercise of reasonable judgment** – The determination of whether an insider is a reporting insider based on the criteria in the basket provision will generally be a question of reasonable judgment. The CSA expect insiders to make reasonable determinations after careful consideration of all relevant facts but recognize that a reasonable determination may not always be a correct determination. The CSA recommend that insiders consult with their issuers when making this determination since confirming that the insider’s conclusion is consistent with the issuer’s view may help establish that a determination was reasonable. Insiders may also wish to seek professional advice or consider the reporting status of individuals in similar positions with the issuer or other similarly situated issuers.

3.2 Meaning of beneficial ownership

- (1) **General** – The term “beneficial ownership” is not defined in securities legislation. Accordingly, beneficial ownership must be determined in accordance with the ordinary principles of property and trust law of a local jurisdiction. In Québec, due to the fact that the concept of beneficial ownership does not exist in civil law, the meaning of beneficial ownership has the meaning ascribed to it in section 1.4 of Regulation 14-501Q. The concept of beneficial ownership in Québec legislation is often used in conjunction with the concept of control and direction, which allows for a similar interpretation of the concept of common law beneficial ownership in most jurisdictions.
- (2) **Deemed beneficial ownership** – Although securities legislation does not define beneficial ownership, securities legislation in certain jurisdictions may deem a

person to beneficially own securities in certain circumstances. For example, in some jurisdictions, a person is deemed to beneficially own securities that are beneficially owned by a company controlled by that person or by an affiliate of such company.

- (3) **Post-conversion beneficial ownership** – Under the Instrument, a person has “post-conversion beneficial ownership” of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the security within 60 days. For example, a person who owns special warrants convertible at any time and without payment of additional consideration into common shares will be considered to have post-conversion beneficial ownership of the underlying common shares. Under the Instrument, a person who has post-conversion beneficial ownership of securities may in certain circumstances be designated or determined to be an insider and may be a reporting insider. For example, if a person owns 9.9% of an issuer’s common shares and then acquires special warrants convertible into an additional 5% of the issuer’s common shares, the person will be designated or determined to be an insider under section 1.2 of the Instrument and will be a reporting insider under subsection 1.1(1) of the Instrument.

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

- (4) **Beneficial ownership of securities held in a trust** – Under common law trust law, legal ownership is commonly distinguished from beneficial ownership. A trustee is generally considered to be the legal owner of the trust property; a beneficiary, the beneficial owner. Under the Québec civil law, a trust is governed by the Québec Civil Code.

A reporting insider who has a beneficial interest in securities held in a trust may have or share beneficial ownership of the securities for insider reporting purposes, depending on the particular facts of the arrangement and upon the governing law of the trust, whether common law or civil law. We will generally consider a person to have or share beneficial ownership of securities held in a trust if the person has or shares

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

- (5) **Disclaimers of beneficial ownership** – The CSA generally will not regard a purported disclaimer of a beneficial interest in, or beneficial ownership of,

securities as being effective for the purposes of determining beneficial ownership under securities legislation unless such disclaimer is irrevocable and has been generally disclosed to the public.

- (6) **When ownership passes** – Securities legislation of certain local jurisdictions provides that ownership is deemed to pass at the time an offer to sell is accepted by the purchaser or the purchaser’s agent or an offer to buy is accepted by the vendor or the vendor’s agent. The CSA is of the view that, for the purposes of the insider reporting requirement beneficial ownership passes at the same time.

3.3 Meaning of control or direction

- (1) The term “control or direction” is not defined in Canadian securities legislation except in Québec, where the *Securities Act* (Québec), in sections 90, 91 and 92, defines the concept of control and deems situations where a person has control over securities. For purposes of the Instrument, a person will generally have control or direction over securities if the person, directly or indirectly, through any contract, arrangement, understanding or relationship or otherwise has or shares
 - (a) voting power, which includes the power to vote, or to direct the voting of, such securities and/or
 - (b) investment power, which includes the power to acquire or dispose, or to direct the acquisition or disposition of such securities.
- (2) A reporting insider may have or share control or direction over securities through a power of attorney, a grant of limited trading authority, or a management agreement. This would also include a situation where a reporting insider acts as a trustee for an estate (or in Québec as a liquidator) or other trust in which securities of the reporting insider’s issuer are included within the assets of the trust. This may also be the case if a spouse (or any other person related to the reporting insider) owns the securities or acts as trustee, but the reporting insider has or shares control or direction over the securities held in trust. In addition, this may be the case where the reporting insider is an officer or director of another issuer that owns securities of the reporting insider’s issuer and the reporting insider is able to influence the investment or voting decisions of the issuer.

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 Supplemental insider reporting requirement

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

transactions that were previously subject to a reporting requirement under former MI 55-103 will be subject to the primary insider reporting requirement under Part 3 of the Instrument.

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

4.2 Insider reporting of equity monetization transactions

- (1) **What are equity monetization transactions?** There are a variety of sophisticated derivative-based strategies that permit investors to dispose of, in economic terms, an equity position in a public company without attracting certain tax and non-tax consequences associated with a conventional disposition of such position. These strategies, which are sometimes referred to as "equity monetization" strategies, allow an investor to receive a cash amount similar to proceeds of disposition, and transfer part or all of the economic risk and/or return associated with securities of an issuer, without actually transferring ownership of or control over such securities. (The term "monetization" generally refers to the conversion of an asset (such as securities) into cash.)
- (2) **What are the concerns with equity monetization transactions?** Where a reporting insider enters into a monetization transaction, and does not disclose the existence or material terms of that transaction, there is potential for harm to investors and the integrity of the insider reporting regime because
 - an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer, may be able to profit improperly from such information by entering into derivative-based transactions that mimic trades in securities of the reporting issuer;
 - market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and
 - since the insider's publicly reported holdings no longer reflect the insider's true economic position in the issuer, the public reporting of such holdings (e.g., in an insider report or a proxy circular) may in fact materially mislead investors.

If a reporting insider enters into a transaction which satisfies one or more of the policy rationales for insider reporting, but for technical reasons it may be argued that the transaction falls outside of the primary insider reporting requirement in

Part 3 of the Instrument, the insider will be required to file an insider report under Part 4 unless an exemption is available. In this way, the market can make its own determination as to the significance, if any, of the transaction in question.

PART 5 AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Automatic Securities Purchase Plans

- (1) Section 5.1 of the Instrument contains an interpretation provision that applies to Part 5. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for both acquisitions and specified dispositions of securities and related financial instruments under an automatic securities purchase plan (ASPP).
- (2) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan or a lump-sum provision of a share purchase plan.
- (3) The exemption does not apply to an “automatic securities disposition plan” (sometimes referred to as a “pre-arranged structured sales plan”) (an ASDP) established between a reporting insider and a broker, since an ASDP is designed to facilitate dispositions not acquisitions. However, if a reporting insider can demonstrate that an ASDP is genuinely an automatic plan and that the insider cannot make discrete investment decisions through the plan, we may consider granting exemptive relief on an application basis to permit the insider to file reports on an annual basis.
- (4) The exemption is not available for a grant of options or similar securities to reporting insiders, since, in many cases, the reporting insider will be able to make an investment decision in respect of the grant. If an insider is an executive officer or a director of the reporting issuer or a major subsidiary, the insider may be participating in the decision to grant the options or other securities. Even if the insider does not participate in the decision, we think information about options or similar securities granted to this group of insiders is important to the market and the insider should disclose this information in a timely manner.

5.2 Specified Dispositions of Securities

- (1) Paragraph 5.1(3)(a) of the Instrument provides that a disposition or transfer of securities is a specified disposition if, among other things, it does not involve a “discrete investment decision” by the director or officer. The term “discrete investment decision” generally refers to the exercise of discretion involved in a specific decision to purchase, hold or sell a security. The purchase of a security as a result of the application of a pre-determined, mechanical formula does not generally represent a discrete investment decision (other than the initial decision to enter into the plan). For example, for an individual who holds stock options in a reporting issuer, the decision to exercise the stock options will generally represent a discrete investment decision. If the individual is a reporting insider, we think the

individual should report this information in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions.

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

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

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

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

5.5 Design and Administration of Plans

- (1) Part 5 of the Instrument provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation

in an ASPP, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a particular plan of an issuer, the issuer should design and administer the plan in a manner that is consistent with this limitation.

- (2) To fit within the definition of an ASPP, the plan must set out a written formula or criteria for establishing the timing of the acquisitions, the number of securities that the insider can acquire and the price payable. If a plan participant is able to exercise discretion in relation to these matters either in the capacity of a recipient of the securities or through participating in the decision-making process of the issuer making the grant, he or she may be able to make a discrete investment decision in respect of the grant or acquisition. We think a reporting insider in these circumstances should disclose information about the grant within the normal timeframe and not on a deferred basis.

PART 6 ISSUER GRANT REPORTS

6.1 Overview

- (1) Section 6.1 of the Instrument contains an interpretation provision that applies to Part 6. Because of this provision, directors and officers of a reporting issuer or a major subsidiary of a reporting issuer who are reporting insiders of the reporting issuer can use the exemption in this Part for grants of securities and related financial instruments.
- (2) A reporting insider who intends to rely on the exemption in Part 6 for a grant of stock options or similar securities must first confirm that the issuer has made the public disclosure required by section 6.3 of the Instrument. If the issuer has not made the required disclosure within the required time, the reporting insider must report the grant within the required time and in accordance with the normal reporting requirements under Part 3 of the Instrument.

6.2 Policy rationale for the issuer grant report exemption

- (1) The issuer grant report exemption reduces the regulatory burden on insiders that is associated with insider reporting of stock options and similar instruments since it allows an issuer to make a single filing on SEDI. This filing provides the market with timely information about the existence and material terms of the grant, making it unnecessary for each of the affected reporting insiders to file an insider report about the grant within the ordinary time periods.
- (2) The concept of an issuer grant report is generally similar to the concept of an issuer event report in that the decision to make the grant originates with the issuer. Accordingly, at the time of the grant, the issuer will generally be in a better position than the reporting insiders who are the recipients of the grant to communicate information about the grant to the market in a timely manner.
- (3) There is no obligation for an issuer to file an issuer grant report for a grant of

stock options or similar instruments. An issuer may choose to do so to assist its reporting insiders with their reporting obligations and to communicate material information about its compensation practices to the market in a timely manner.

- (4) If an issuer chooses not to file an issuer grant report, the issuer should take all reasonable steps to notify reporting insiders of their grants in a timely manner to allow reporting insiders to comply with their reporting obligations.
- (5) The concept of an issuer grant report is different from the issuer event report that an issuer is required to make under Part 2 of NI 55-102 in that an issuer is not required to file an issuer grant report.

6.3 Format of an issuer grant report – There is no required format for an issuer grant report. However, an issuer grant report must include the information required by section 6.3 of the Instrument.

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

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

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

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

8.1 [Intentionally left blank]

PART 9 EXEMPTIONS

9.1 Scope of exemptions – The exemptions under the Instrument are only exemptions

from the insider reporting requirements contained in the Instrument and are not exemptions or defences from the provisions in Canadian securities legislation imposing liability for improper insider trading.

- 9.2 Reporting Exemption** – The definition of “reporting insider” includes certain enumerated persons or companies that generally satisfy the criteria contained in subsection (i) of the definition of reporting insider, namely, routine access to material undisclosed information and significant power or influence over the reporting issuer. Although there is no general exemption for the enumerated persons or companies based on lack of routine access to material undisclosed information or lack of power or influence, we will consider applications for exemptive relief where the issuer or reporting insider can demonstrate that the reporting insider does not satisfy these criteria. This might include, for example, a situation where a foreign subsidiary may appoint a locally resident individual as a director to meet residency requirements under applicable corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.
- 9.3 Reporting Exemption (certain directors and officers of insider issuers)** – The reference to “material facts or material changes concerning the investment issuer” in section 9.3 of the Instrument is intended to include information that originates at the insider issuer level but which concerns or is otherwise relevant to the investment issuer. For example, in the case of an issuer that has a subsidiary investment issuer, a decision at the parent issuer level that the subsidiary investment issuer will commence or discontinue a line of business would generally represent a “material fact or material change concerning the investment issuer”. Similarly, a decision at the parent issuer level that the parent issuer will seek to sell its holding in the subsidiary investment issuer would also generally represent a “material fact or material change concerning the investment issuer.” Accordingly, a director or officer of the parent issuer who routinely had access to such information concerning the investment issuer would not be entitled to rely on the exemption for trades in securities of the investment issuer.
- 9.4 Exemption for a pledge where there is no limitation on recourse** – The exemption in paragraph 9.7(b) of the Instrument is limited to pledges of securities in which there is no limitation on recourse since a limitation on recourse may effectively allow the borrower to “put” the securities to the lender to satisfy the debt. The limitation on recourse may effectively represent a transfer of the risk that the securities may fall in value from the insider to the lender. In these circumstances, the transaction should be transparent to the market.

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

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

PART 10 CONTRAVENTION OF INSIDER REPORTING REQUIREMENTS

10.1 Contravention of insider reporting requirements

- (1) It is an offence to fail to file an insider report in accordance with the filing deadlines prescribed by the Instrument or to submit information in an insider report that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.
- (2) A failure to file an insider report in a timely manner or the filing of an insider report that contains information that is materially misleading may result in one or more of the following
- the imposition of a late filing fee;
 - the reporting insider being identified as a late filer on a public database of late filers maintained by certain securities regulators;
 - the issuance of a cease trade order that prohibits the reporting insider from directly or indirectly trading in or acquiring securities or related financial instruments of the applicable reporting issuer or any reporting issuer until the failure to file is corrected or a specified period of time has elapsed; or
 - in appropriate circumstances, enforcement proceedings.
- (3) Members of the CSA may also consider information relating to wilful or repeated non-compliance by directors and executive officers of a reporting issuer with their insider reporting obligations in the context of a prospectus review or continuous disclosure review, since this may raise questions relating to the integrity of the insiders and the adequacy of the issuer's policies and procedures relating to insider reporting and insider trading.

PART 11 INSIDER TRADING

- 11.1 Non-reporting insiders** – Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.
- 11.2 Written disclosure policies** – National Policy 51-201 *Disclosure Standards* outlines detailed best practices for issuers for disclosure and information

containment and provides interpretative guidance of insider trading laws. We recommend that issuers adopt written disclosure policies to assist directors, officers, employees and other representatives in discharging timely disclosure obligations. Written disclosure policies also should provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading based on inside information. Adopting the CSA best practices may assist issuers to ensure that they take all reasonable steps to contain inside information.

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