

**NOTICE OF PROPOSED CHANGES TO NATIONAL INSTRUMENT 55-101
AND COMPANION POLICY 55-101CP
EXEMPTION FROM CERTAIN INSIDER REPORTING REQUIREMENTS
AND
RESCISSION OF OSC POLICY 10.1 APPLICATIONS FOR EXEMPTION
FROM INSIDER REPORTING OBLIGATIONS FOR INSIDERS
OF
SUBSIDIARIES AND AFFILIATED ISSUERS**

On August 20, 1999, the Canadian Securities Administrators (the "CSA") published the following two instruments (collectively, the "1999 Proposed Instruments") for comment:

- proposed National Instrument 55-101 - Exemption from Certain Insider Reporting Requirements (the "1999 Proposed National Instrument")
- proposed Companion Policy 55-101CP (the "1999 Proposed Policy").

The 1999 Proposed Instruments were published at (1999), 22 OSCB 5161. The accompanying Notice (the "1999 Notice") summarized these proposed instruments, and generally requested comments.

The CSA received comments on the 1999 Proposed Instruments from three commentators. The identity of the commentators and a summary of their comments, together with the CSA's responses to those comments, are contained in Appendix "A" of this Notice. The CSA thank the commentators for their comments.

The CSA considered the comments received on the 1999 Proposed Instruments. The CSA also considered a number of discretionary exemptive orders relating to the subject matter of the National Instrument which have recently been considered and granted by the CSA. The CSA also considered recommendations of staff of the CSA.

As a result of these considerations and further deliberations of the CSA, the CSA have revised the 1999 Proposed Instruments and have republished them for comment.

The republished versions of these proposed instruments are referred to in this Notice collectively as the "Proposed Instruments", and separately as the "Proposed National Instrument" and the "Proposed Policy". This Notice summarizes changes of a substantive nature that have been made to the 1999 Proposed Instruments. Other changes of relevance to readers are in most cases identified in the footnotes to the Proposed Instruments.

This Notice is accompanied by the Proposed National Instrument and the Proposed Policy.

Substance and Purpose of Proposed National Instrument and Companion Policy

The purpose of the Proposed National Instrument is to provide certain exemptions from the obligation to file insider reports under Canadian securities legislation. Generally speaking, the Proposed National Instrument

- provides an exemption from the obligation to file insider reports for certain directors and senior officers of subsidiaries and of affiliates of insiders who neither hold the securities of a reporting issuer in significant amounts nor are in a position to acquire knowledge of undisclosed material information,
- permits directors and senior officers of a reporting issuer or of a subsidiary of the reporting issuer to report acquisitions of securities of the reporting issuer under automatic securities purchase plans on an annual basis in most circumstances,
- permits issuers conducting normal course issuer bids to report acquisitions of securities under such bids on a monthly basis, and
- permits insiders of a reporting issuer to report changes in direct or indirect beneficial ownership of, or control or direction over securities by, such insiders pursuant to certain issuer events, such as a stock dividend, stock split, consolidation, amalgamation, reorganization or merger, at the time of their next required insider report.

The Proposed National Instrument is an initiative of the CSA, and is being proposed for implementation as a rule, regulation or other appropriate instrument in all of the jurisdictions represented by the CSA.

As a result of the Proposed National Instrument, certain local policies such as Ontario Securities Commission Policy 10.1, British Columbia Local Policy Statement 3-14 and Policy Statement No. Q-10 of the Commission des valeurs mobilières du Québec that set out guidelines for applications for exemptions from the insider reporting obligations in these situations will no longer be necessary when the Proposed National Instrument is implemented. It is proposed that these policies be rescinded. In Ontario, Policy 10.1 also refers to directors and senior officers of companies that are insiders of the reporting issuer. As relief for these persons is not applied for or granted very often, and because this type of relief is not covered in similar policies of other provinces and is more appropriately dealt with on a case by case basis, those insiders are not granted relief under the Proposed National Instrument.

Canadian securities legislation imposes an obligation on insiders to disclose ownership of and trading in securities of reporting issuers, in part in an attempt to deter illegal insider trading and to increase investor confidence in the securities market by providing investors and potential investors with information concerning the trading activities of substantial securityholders and other insiders of the issuer. The definition of "insider" in Canadian securities legislation, other than the Québec legislation, includes any person or company beneficially owning, directly or indirectly, or exercising control or direction over, voting securities of a reporting issuer carrying more than 10 percent of the voting rights attached to all voting securities of the reporting issuer.

In Québec, the definition is slightly different as an insider includes a person who exercises control over more than 10 percent of a class of voting shares or shares with an unlimited right to a share of the profits or assets of the issuer on a winding-up. Every director or senior officer of an insider of a reporting issuer is also an insider of the reporting issuer. Canadian securities legislation, other than the Québec legislation, stipulates that a company is deemed to beneficially own securities beneficially owned by its affiliates. As a consequence of these definitions, insider reporting obligations are imposed on directors and senior officers of affiliates of an insider of a reporting issuer. These directors and officers may have no relationship with the reporting issuer and no access to undisclosed material information concerning the reporting issuer.

Canadian securities legislation also imposes an obligation on insiders to file a report for each purchase made under automatic securities purchase plans. These purchases are typically in amounts, at prices and at times determined by established formula or criteria and the only investment decision by the insider is the decision to participate in the plan or to cease participating in the plan.

The Canadian securities regulatory authorities have recognized the extent to which compliance with the insider reporting requirements can be unnecessarily burdensome and have, in recent years, provided exemptive relief on a case-by-case basis in response to applications made on behalf of directors and senior officers of subsidiaries and affiliates of corporate insiders of reporting issuers, for purchases made by insiders under automatic securities purchase plans and for issuers conducting normal course issuer bids. The Proposed Policy makes it clear that these orders will, except as otherwise provided in them, still be in effect notwithstanding the implementation of the Proposed National Instrument. The degree to which the orders replicate each other suggests that the process of granting case-by-case exemptions is routine and for that reason the relief set out in the Proposed National Instrument is merited.

It is proposed that the Proposed National Instrument will come into force contemporaneously with proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI). Proposed National Instrument 55-102 will establish an electronic filing system for insider trading reports. It is intended that the Proposed National Instrument be capable of effective implementation within the electronic filing system regime to be established under proposed National Instrument 55-102.

Currently, the securities legislation of some Canadian jurisdictions provides for an exemption from the insider reporting requirement upon the occurrence of specified corporate events, such as those stock dividends, stock splits and similar events where the proportionate holdings of insiders do not change, where an officer of the issuer files a notice of the transaction within 10 days. Under proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI), which establishes an electronic filing system for insider trade reporting, SEDI issuers will be required to report such events. However, under the electronic filing system, such reports will not adjust the individual disclosure for insiders. In light of this, the existing exemption will not effectively co-exist with the new electronic filing system for SEDI issuers and for this reason the CSA propose to revoke the existing exemptive relief in Canadian securities legislation. Nonetheless, the CSA believes that exemptive relief should be provided to insiders in these

circumstances and accordingly the exemption in Part 7 has been provided to provide exemptive relief for insiders whose holdings are affected by such events.

Similarly, securities legislation of some Canadian jurisdictions provides for an exemption from the insider reporting requirement where an officer of the issuer files notice of the acquisition by a person or company of securities of an issuer through a stock dividend plan, a share purchase plan or other plan available to a class of security holders, employees or management of an issuer. Again, this exemption will not effectively co-exist with the new electronic filing system for SEDI issuers. Moreover, the exemptive relief provided by Part 5 of the Proposed National Instrument provides relief in respect of the same subject matter as the existing exemptive relief. The CSA also propose to revoke this existing exemptive relief in Canadian securities legislation for these reasons.

The CSA may make further changes to the Proposed National Instrument to facilitate the effective implementation of proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI).

The Proposed Policy also makes it clear that the Proposed National Instrument only provides an exemption from the insider reporting requirements and not from liability for improper trading under Canadian securities legislation.

Summary of Proposed National Instrument and Changes to the Proposed National Instrument

Definitions

The Proposed National Instrument is divided into eight parts.

Part 1 contains a definition section. As described below in Part 5, the definition of "automatic securities purchase plan" has been changed to provide that the exemption contained in Part 5 of the Proposed National Instrument will extend to securities of the reporting issuer acquired under a plan of a subsidiary of the reporting issuer, and will be available to directors and senior officers of such a subsidiary. The definition has also been changed to indicate that the formula or criteria relating to the timing of acquisitions of securities, the number of securities which may be acquired under the plan by participants and the price payable for securities need not be set out in the plan, but are to be set out in writing in a plan document. The definition section has also been changed to include definitions of "lump-sum provision", "cash payment option", and "dividend or interest reinvestment plan" to clarify, as described below, that the exemption contained in Part 5 does not apply to the acquisition of securities by a director or senior officer pursuant to a lump-sum provision of a plan, including a cash payment option under a dividend or interest reinvestment plan. In addition, a definition of "normal course issuer bid" has been added for the purposes of the new exemption added in Part 6 relating to insider reporting requirements for normal course issuer bids, as described below, and a definition of "issuer event" has been added for the purposes of the new exemption added in Part 7 relating to insider reporting requirements for certain issuer events, as described below.

Exemption for Directors and Senior Officers of Subsidiaries

No changes were made to Part 2, which provides an exemption from insider reporting for directors and senior officers of subsidiaries of a reporting issuer, other than persons who are directors or senior officers of significant subsidiaries or who in the ordinary course receive information as to material facts or material changes concerning the reporting issuer prior to general disclosure. The exemption is also not available to a person who is an insider of the reporting issuer in some other capacity and not otherwise exempted. A significant subsidiary is defined to be a subsidiary that represents 10 percent or more of the consolidated assets or 10 percent or more of the consolidated revenues of the reporting issuer.

Exemption for Directors and Senior Officers of Affiliates

No changes were made to Part 3, which provides an exemption for directors and senior officers of affiliates of insiders of a reporting issuer. This exemption is not available to directors or senior officers who, in the ordinary course, receive information as to material facts or material changes concerning the reporting issuer before general disclosure of such material facts or material changes. It is also not available to directors or senior officers of an affiliate that supplies goods or services to, or has contractual arrangements with, the reporting issuer or a subsidiary, the nature and scale of which could reasonably be expected to have a significant effect on the market price or value of the reporting issuer's securities. The exemption is also not available to a person who is an insider of the reporting issuer in some other capacity and not otherwise exempted. It should be noted that Part 3 does not apply in Québec, as under the *Québec Securities Act* directors and senior officers of affiliates of insiders do not have insider reporting obligations.

List of Exempted Insiders

Part 4, which was Part 5 of the 1999 Proposed National Instrument, imposes an obligation on the reporting issuer to maintain a list of all insiders of the reporting issuer exempted by Parts 2 and 3 of the Proposed National Instrument and the basis on which each insider is entitled to rely on one of the exemptions. The ordering of the Parts was changed to provide a more logical sequence, as this Part refers to the exemptions in Parts 2 and 3. Changes were made to this Part to clarify that the list refers to both exemptions and the list is to set out the basis on which each insider is entitled to rely on one of the exemptions.

Reporting for Automatic Securities Purchase Plans

Part 5, which was Part 4 in the 1999 Proposed National Instrument, provides an exemption from the obligation to report purchases under automatic securities purchase plans provided that the insider reports the purchases of securities when reporting a sale of the securities acquired under such plans or, if none have been sold, on an annual basis. The exemption in Part 5 is not available if the insider also satisfies the insider test under securities legislation that is triggered by shareholdings in excess of 10 percent.

Section 5.1 was changed to provide that the exemption extends to securities of a reporting issuer acquired under a plan of a subsidiary of the reporting issuer and to make the reporting exemption

available to directors and senior officers of subsidiaries of the reporting issuer. Section 5.1 was also changed to clarify that the reporting exemption is not available for the acquisition of securities by a director or senior officer pursuant to a lump-sum provision of a plan. A definition of the term "lump-sum provision" has been added in Part 1. This term is defined to mean a provision of an automatic securities purchase plan which allows a director or senior officer to acquire securities in consideration of an additional lump-sum payment, including, in the case of a dividend or interest reinvestment plan, a cash payment option. A definition of "cash payment option" has also been added to Part 1. The term "cash payment option" is defined to mean 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 purchased using the amount of the dividend or interest payable to or for the account of the participant or acquired as a stock dividend or other distribution out of earnings or surplus. Generally speaking, a lump-sum provision is the term used for such a provision in an employee share purchase plan, while the term "cash payment option" is used to describe a similar feature in a dividend or interest reinvestment plan. A definition of "dividend or interest reinvestment plan" has also been added Part 1 to assist in defining "cash payment option". The term "dividend or interest reinvestment plan" is defined to mean an arrangement under which a holder of securities of an issuer is permitted to direct that the dividends or interest paid on those securities be applied to the purchase, from the issuer or an administrator of the issuer, of securities of the issuer's own issue.

Section 5.3, which provides for the annual reporting requirement under the Proposed National Instrument, has also been changed. Section 5.3 now provides that an insider who relies on the exemption from the insider reporting requirements contained in section 5.1 is to report, in prescribed form, all acquisitions of securities under automatic securities purchase plans that have not been previously reported, (a) for any securities acquired under an automatic securities purchase plan which have been disposed of or transferred, within the time required by securities legislation for reporting the disposition or transfer; and (b) for any securities acquired under an automatic securities purchase plan during a calendar year which have not been disposed of or transferred, annually within 90 days of the end of the calendar year. The 1999 Proposed National Instrument provided for annual reporting on the basis of the financial year of the issuer. This section was also changed to clarify that the annual reporting requirement in section 5.3 applies to an insider that relies on the exemption from the insider reporting requirement contained in section 5.1. The 1999 Proposed National Instrument provided for this reporting requirement for an insider that was exempt from the insider reporting requirement under section 5.1.

In considering the provisions of this Part, reference should be made below to "Regulations to be Revoked".

Reporting for Normal Course Issuer Bids

A new exemption has been added in Part 6 of the Proposed National Instrument. Section 6.1 provides that, despite any requirement of securities legislation relating to the insider reporting requirement that an issuer file a report for each acquisition of securities by the issuer under an issuer bid within 10 days of the date of the acquisition, the issuer may report, in prescribed form, acquisitions of securities by it under a normal course issuer bid within 10 days of the end of the

month in which the acquisitions occurred. A definition of the term "normal course issuer bid" has been added to Part 1 for the purposes of this new exemption. The term "normal course issuer bid" has been defined as (a) an issuer bid pursuant to which the number of securities acquired by the issuer within a period of twelve months does not exceed 5% of the securities of that class issued and outstanding at the commencement of the period, or (b) a normal course issuer bid as defined in the policies of The Montreal Exchange, The Canadian Venture Exchange or The Toronto Stock Exchange, conducted in accordance with the policies of that exchange. The CSA determined that, in light of the requirements in securities legislation and of stock exchanges relating to normal course issuer bids, and in particular, the disclosure requirements relating to such bids, it was not necessary to require that issuers file a report for each acquisition of securities by an issuer under a normal course issuer bid within 10 days of the date of each acquisition, and that it would be sufficient for issuers to report such acquisitions within 10 days following the end of the month in which the acquisitions occurred.

Reporting for Certain Issuer Events

As described above, as a result of the electronic filing system proposed to be adopted under National Instrument 55-102 System for Electronic Data on Insiders (SEDI), it is proposed to revoke the exemption from the insider reporting requirement contained in securities legislation for certain corporate events which affect all holdings of a class of securities in the same manner, where an officer of the issuer files a written notice of the event within ten days of the event. However, also as described above, the CSA have determined that it is appropriate to provide in Part 7 alternative relief from the insider reporting requirement for insiders affected by issuer events, on the same policy basis as the existing exemption. The CSA believe that this exemption is appropriate, as disclosure is required under securities legislation for such issuer events, and the proportionate holdings of insiders remains the same.

Accordingly, a new exemption has been added in Part 7 of the Proposed National Instrument. Section 7.1 provides an exemption from the obligation to report a change in direct or indirect beneficial ownership of, or control or direction over securities by, an insider of a reporting issuer for securities of the reporting issuer pursuant to an issuer event provided that the insider reports the changes within the time required by securities legislation for reporting any other change in direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer. The term "issuer event" is defined in Part 1 to mean a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event that affects all holdings of a class of securities in the same manner.

The CSA believe that this exemption is appropriate, as disclosure is required under securities legislation for such issuer events, and the proportionate holdings of insiders remains the same.

In considering the provisions of this Part, reference should be made below to "Regulations to be Revoked".

Summary of Proposed Companion Policy and Changes to the Proposed Companion Policy

The Proposed Policy has five parts.

Purpose

The first part sets out the purpose of the Proposed Policy, which has not been changed.

Definitions

The second part provides commentary on the definition of "automatic securities purchase plan". The second part has been changed to remove the references to optional cash purchase components of dividend or interest reinvestment plans or share purchase plans and stock option plans, which references are now set out in the fourth part, as described below.

Scope of Exemptions

The third part sets out that the Proposed National Instrument only provides exemptions from the insider reporting requirement and not from the provisions in Canadian securities legislation imposing liability for improper insider trading. No changes were made to the third part of the Proposed Policy other than to refer to exemptions in the plural.

Automatic Securities Purchase Plans

The fourth part deals with the reporting of acquisitions or dispositions by a director or senior officer of a reporting issuer or of a subsidiary of the reporting issuer of securities under an automatic securities purchase plan. A number of changes have been made to the fourth part of the Proposed Policy, most of which reflect the changes described above to the Proposed National Instrument.

The title of the fourth part has been changed to more accurately reflect its contents.

A change to clause (1) indicates that section 5.1 of the Proposed National Instrument extends the exemption for acquisitions of securities of a reporting issuer under an automatic securities purchase plan to directors or senior officers of the subsidiary of the reporting issuer, in addition to acquisitions by a director or senior officer of the reporting issuer. Clause (2) has been added to the Companion Policy to reflect the change made to the Proposed National Instrument to clarify that the exemption does not apply to securities acquired under the optional cash purchase components of dividend or interest reinvestment plans or share purchase plans, the "lump-sum" provisions of share purchase plans, and stock option plans. Clause (3) (clause (2) in the 1999 Proposed Policy) has been changed, reflecting the change in the Proposed National Instrument, that a person relying on this exemption must report all acquisitions pursuant to the automatic securities purchase plan annually no later than 90 days after the end of the calendar year. The 1999 Proposed Instrument provided for annual reporting on a financial year basis. Clause (3) has also been changed to clarify that the annual reporting requirement applies to persons who have not disposed of or transferred securities which were acquired under automatic securities purchase plans. Clause (4) of the Proposed Policy (clause (3) in the 1999 Proposed Policy) has been changed to clarify that the Instrument does not relieve a director or senior officer from his or her insider reporting obligations in respect of dispositions or transfers of securities. Clause (5) of the Proposed Policy (clause (4) in the 1999 Proposed Policy) has been changed to reflect the change

in the Proposed National Instrument that the annual reporting requirement will be on a calendar year, as opposed to a financial year, basis. Clause (5) has also been changed to clarify that a director or senior officer must report dispositions or transfers of securities, and acquisitions of securities which are not exempt from the insider reporting obligation, within the time periods required by securities legislation. Clause (6) has been added to clarify that clause 5.3(a) of the Proposed National Instrument requires reports for any securities acquired under a automatic securities purchase plan which are disposed of or transferred and to provide guidance as to the particulars of such insider trades to be reported. A new clause (7) has been added to provide the CSA's views as to the particulars to be included in the annual report. Clause (8) was clause (5) in the 1999 Proposed Policy. As in the 1999 Proposed Policy, the Proposed Policy indicates that the report filed for acquisitions under the automatic purchase plan will reconcile acquisitions under the plan with other acquisitions or dispositions.

A new section has been added to Part 4 of the Proposed Policy, section 4.2, which sets out the views of the CSA that the Instrument provides a limited exemption from insider reporting requirements in circumstances in which an insider, by virtue of participation in an automatic securities purchase plan, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a particular plan, the issuer should design and administer such plan in a manner which is consistent with this limitation.

Existing Exemptions

The fifth part states that insiders can continue to rely on existing exemptive orders, subject to their terms, despite the implementation of the Proposed National Instrument. Changes were made to this part of the Proposed Policy to clarify that insiders could continue to rely on existing orders, but not on orders previously issued and no longer in force.

Terms used in the Proposed Policy that are defined or interpreted in the National Instrument or a definition instrument in force in the jurisdiction should be read in accordance with the National Instrument or definition instrument, unless the context otherwise requires.

Authority for the Proposed National Instrument

In those jurisdictions in which the Proposed National 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 National Instrument.

The Proposed National 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 National 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 National Instrument and Proposed Policy are related to each other as they deal with the same subject matter. In Ontario, the Proposed Policy is related to sections 106 to 109 of the *Securities Act* (Ontario) and Part VIII of the Regulation to the Act. As described above, the Proposed Instruments are also related to proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI).

Alternatives Considered

Consideration was given to continuing the current practice of granting the relief set out in the Proposed National 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 National Instrument would provide relief to certain insiders who fall within the scope of the insider reporting requirement. This is a step in implementing the recommendations of the Task Force on Operational Efficiencies that reported to the CSA in 1995.

Unpublished Materials

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

Anticipated Costs and Benefits

The Proposed National 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 only costs imposed by the Proposed National Instrument arise from the requirement in Part 4 to maintain a list of exempted insiders.

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

Regulations to be Revoked

In connection with the implementation of the Proposed National Instrument, it is the intent of the Commission to revoke subsections (1) and (2) of section 172 of the Regulation. As described

above, these exemptions would not effectively co-exist under the electronic filing system proposed to be established under proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI) for SEDI issuers. In addition, relief in respect of the same subject matter is being provided by Parts 5 and 7 of the Proposed National Instrument. Accordingly, for SEDI issuers, it is appropriate that the exemptions be revoked. The exemptions in subsections 172(1) and (2) could conceivably be retained for non-SEDI issuers. However, the Commission was of the view that it was preferable that the same exemptive relief be available for insiders of all issuers and that additional exemptive relief should not be provided to non-SEDI issuers. Moreover, as the provisions of Parts 5 and 7 of Proposed National Instrument provide relief with respect to the same subject matter as the relief provided in subsections 172(1) and (2) of the Regulation, and, in most cases, the provisions of Parts 5 and 7 of the Proposed National Instrument will be of more benefit to insiders than the relief currently provided by subsections 172(1) and (2), the Commission believes that these subsections can be revoked with little cost to insiders of non-SEDI issuers. However, the exemptive relief provided by Part 5, as noted above, is not available if the insider also satisfies the insider test under securities legislation that is triggered by shareholdings in excess of 10%, whereas the exemptive relief provided by subsection 172(2) provides exemptive relief to such persons. As it is proposed to revoke the existing exemptions in subsections 172(1) and (2) of the Regulation for all issuers, and the relief provided by the provisions of Parts 5 and 7 of the Proposed National Instrument does not provide precisely the same relief in precisely the same manner, and does not provide the relief to all insiders, as these subsections of the Regulation proposed to be revoked, the Commission invites comments on these revocations. In particular, the Commission invites comments on whether the relief provided in subsections 172(1) and (2) should be retained for non-SEDI issuers.

Comments

Interested parties are invited to make written submissions with respect to the Proposed National Instrument and Proposed Policy. Submissions received by August 23, 2000 will be considered.

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

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

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

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St Pierre
Secrétaire
Commission des valeurs mobilières du Québec
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3

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

Questions may be referred to any of the following:

Laura Startup
Senior Legal Counsel
Policy and Legislation
British Columbia Securities Commission
lstartup@bcsc.bc.ca
(604) 899-6748
or (800) 373-6393 (in B.C.)

Stephen Murison
Legal Counsel
Alberta Securities Commission
stephen.murison@seccom.ab.ca
(403) 297-4233

Barbara Shourounis
Director
Saskatchewan Securities Commission
barbara.shourounis.ssc@govmail.gov.sk.ca
(306) 787-5645

Doug Brown
Deputy Director, Legal Division

Manitoba Securities Commission
dbrown@cca.gov.mb.ca
(204) 945-2548

Iva Vranic
Manager, Corporate Finance
Ontario Securities Commission
ivranic@osc.gov.on.ca
(416) 593-8115

Sylvie Lalonde
Conseillère en réglementation
Commission des valeurs mobilières du Québec
sylvie.lalonde@cvmq.com
(514) 940-2199 Ext. 4555

Text of Proposed Rescission of Ontario Securities Commission Policy 10.1

OSC Policy 10.1 is replaced by the Proposed National Instrument.

The text of the proposed rescission is:

"Ontario Securities Commission Policy 10.1 Applications for Exemption from Insider Reporting Obligations for Insiders of Subsidiaries and Affiliated Issuers is rescinded effective upon the date Proposed National Instrument 55-101 comes into force."

Proposed National Instrument and Companion Policy

The text of the Proposed National Instrument and Proposed Policy follows, together with footnotes that are not part of the Proposed National Instrument and Proposed Policy, as applicable, but have been included to provide background and explanation.

DATED: June 23, 2000.

Appendix "A"

Summary of Comment Letters and Responses

Three comment letters were received, one from The Great-West Life Assurance Company, one from the Canadian Bankers Association and one from Quebecor Inc., in response to the request for comments published at (1999), 22 OSCB 5161.

General Comments

One commentator indicated that it welcomed the initiative of the CSA in proposing the National Instrument. Another commentator indicated that it recognized and applauded the significant steps taken by the CSA to streamline and decrease the administrative burden with respect to reporting requirements.

Definition of Automatic Securities Purchase Plan

One commentator requested that the definition of "automatic securities purchase plan" in the 1999 Proposed Instrument be amended in order to extend the insider reporting exemptions to a plan of a subsidiary of a reporting issuer and to directors and senior officers of the subsidiary, where such a subsidiary has established a plan that allows its employees to purchase shares of the parent, which is itself the reporting issuer.

The CSA have determined that the proposed revision is reasonable, as there is no reason not to include a plan of a subsidiary of the reporting issuer in the definition of an "automatic securities purchase plan" and to extend the exemption to directors and senior officers of subsidiaries of reporting issuers. Accordingly, the definition of "automatic securities purchase plan" in section 1.1, and section 5.1, have been changed to add the words "or subsidiary of a reporting issuer" where appropriate.

A commentator submitted that the definition of "automatic securities purchase plan" should be amended to include dividend reinvestment plans offered by registered broker dealers, given that the Canadian securities regulators have on numerous occasions granted exemptions to such plans. The commentator also submitted that the optional cash component of such plans should also be included in the definition of "automatic securities purchase plan" as such plans are subject to restrictions as to when purchases are actually made, which make them unlikely to be abused for the purposes of insider trading.

The CSA have determined that the definition of "automatic securities purchase plan" need not be revised to include dividend or interest reinvestment plans ("DRIPs"), given that the Proposed Policy specifically states that the definition of "automatic securities purchase plan" includes DRIPs so long as the criteria in the definition are met.

The CSA have determined not to extend the definition of automatic securities purchase plans to DRIPs offered by registered dealers, as there are more discretionary elements to the participation of insiders in such arrangements. The CSA also determined not to extend the definition of automatic securities purchase plans to DRIPs offered by registered dealers, as they believe that it is appropriate to restrict the exemption to plans of reporting issuers of which the directors or senior officers are insiders, on the basis that this will effectively promote compliance with the requirements contained in the exemptions. The CSA note that, to the extent that registered dealers are subsidiaries of reporting issuers, the directors and senior officers of those reporting issuers and their subsidiaries will be able to avail themselves of the automatic securities purchase plan exemption provided by the Proposed National Instrument.

The CSA disagree with the suggestion that the optional cash component of an automatic securities purchase plan be included in the definition of "automatic securities purchase plan."

The decision to invest an additional amount of cash is discretionary and by its very nature falls outside of the ambit of an automatic securities purchase plan. A number of precedent decisions have declined to grant exemptive relief in respect of the optional cash component of such plans, and the CSA are of the view there is no good reason to change the regulatory position on this point.

Definition of Senior Officer in Securities Legislation -

Narrow Insider Reporting Requirements

A commentator submitted that the definition of "senior officer" should be narrowed such that the insider reporting requirements would not apply to a senior officer who is a vice-president of a reporting issuer or a vice-president of a subsidiary (including a significant subsidiary) of a reporting issuer so long as:

- a) the vice-president is not in charge of a principal business unit, division or function of the reporting issuer or subsidiary, as the case may be;
- b) the vice-president does not receive, in the ordinary course, information as to material facts or changes concerning the reporting issuer before the material facts or changes are generally disclosed; and
- c) the vice-president is not an insider of the reporting issuer or a subsidiary in any other capacity.

It was submitted that the foregoing proposal would bring the insider reporting requirements more into line with the approach taken by the United States Securities and Exchange Commission and with other existing reporting requirements, such as those found in Form 40 which only require disclosure with respect to "executive officers" of an issuer, as opposed to all "senior officers". The commentator was of the view that narrowing the insider reporting requirements would relieve the large administrative burden currently placed on certain issuers, particularly where titles are often conferred on individuals that "are honorific in nature and may not necessarily reflect the level of managerial responsibility of the individual".

The CSA have determined that the Proposed National Instrument should not be revised to narrow the definition of "senior officer" for insider reporting purposes, as it is outside the scope of the Proposed National Instrument at this time to significantly amend the definition of insider contained in securities legislation. The CSA believe that this comment raises broader issues which require significant further consideration and the CSA are currently reviewing this matter. Pending the results of such review, the CSA will consider exemption applications on a case by case basis in this regard.

Annual Reports

A commentator noted that individuals who are required to file insider reports within 90 days of the financial year end of certain issuers may have difficulty in complying because the statements produced by the issuers which such persons need in order to file such reports are only delivered to them on a calendar quarterly basis. The commentator therefore requested that the deadline for the annual reporting requirement for acquisitions of securities under an automatic securities purchase plan be extended to March 31 or, in the alternative, that the 1999 Proposed Instrument be changed to permit an issuer or insider to elect to report within 90 days of the end of either the calendar year or the fiscal year, in order to ensure that the required information is available on a timely basis to the persons required to file insider reports.

The CSA have determined that it is appropriate for the annual reporting to be on a calendar year basis. The CSA believe that this addresses the concern raised by the commentator, without the necessity of providing for an election. This change has been made in section 5.3 of the Proposed National Instrument.

List of Exempted Insiders

A commentator noted that the 1999 Proposed Instrument requires reporting issuers to maintain a list of all insiders exempted by the Instrument and the basis upon which such insiders are exempt. The commentator stated that for certain large institutions, the task of keeping a list of all insiders pursuant to this section is very burdensome. Instead, the commentator proposed that this requirement be amended such that a reporting issuer only be required to maintain a list of individuals who are required to file insider reports.

The CSA decided that it was appropriate to require issuers to keep a list of all those insiders who fall within the exemptions from insider reporting requirements. As a result, section 4.1 (formerly section 5.1) was added to the 1999 Proposed National Instrument. Section 4.1 is less onerous than the terms of numerous prior orders where issuers were required to provide copies of the list to the regulators and to promptly notify the regulators of any changes to the list. In the CSA's view, requiring issuers to maintain a list of all those individuals who are exempt from the insider reporting requirements is a logical step; otherwise, it would be difficult for regulators to review an issuer's practices in this regard. The CSA assume that, as a practical matter, determinations will have to be made by issuers as to the insiders who are eligible for relief under the Proposed National Instrument in any event, so that the maintenance of such a list should not be unduly onerous. Consequently, the CSA have determined that section 4.1 (formerly section 5.1) of the Proposed National Instrument should not be changed.