Notice of Proposed Amendment to and Restatement of

National Instrument 55-101 and Companion Policy 55-101CP

Insider Reporting Exemptions

Introduction

The Canadian Securities Administrators (the CSA or we) will, subject to the receipt of necessary ministerial approvals, implement the following instruments, effective April 30, 2005:

- National Instrument 55-101 *Insider Reporting Exemptions* (the proposed instrument), and

- Companion Policy 55-101CP *Insider Reporting Exemptions* (the proposed policy).

The proposed instrument and the proposed policy (collectively the proposed materials) are intended to replace the current versions of National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (the current instrument) and Companion Policy 55-101CP *Exemption from Certain Insider Reporting Requirements* (the current policy) that came into force in all CSA jurisdictions on May 15, 2001.

The proposed instrument has been made or is expected to be made by each member of the CSA, and will be implemented as

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Ontario,
- a regulation in Québec and Saskatchewan,
- a policy in Nunavut, Prince Edward Island and the Yukon Territory, and
- a code in the Northwest Territories.

The proposed policy is expected to be implemented as a policy in the jurisdictions that adopt the proposed instrument.

The proposed materials are being published concurrently with this Notice and can be found on websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.sfsc.gov.sk.ca
- www.msc.gov.mb.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.gov.ns.ca/nssc/

Ministerial approvals

In British Columbia, the Minister of Competition, Science and Enterprise gave his approval in principle of the proposed instrument on January 14, 2004. The proposed instrument will be adopted as a rule and come into force in British Columbia on April 30, 2005, subject to obtaining final ministerial approval.

In Ontario, the proposed instrument and other required materials were delivered to the Chair of the Management Board of Cabinet on February 11, 2005 (the Minister). The Minister may approve or reject the proposed instrument or return it for further consideration. If the Minister approves the proposed instrument or does not take any further action by April 12, 2005, the proposed instrument will come into force on April 30, 2005.

In Québec, the proposed instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The proposed instrument will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It must also be published in the Bulletin.

Substance and purpose

The purpose of the current instrument and the current policy is to provide certain exemptions from the obligation to file insider reports under Canadian securities legislation where the policy reasons for such reporting do not apply.

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

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

- enhanced deterrence against unlawful insider trading, since the insider reporting obligation will now focus more closely on insiders who routinely have access to material undisclosed information;

- increased market efficiency, since the trading activities of “true” insiders may be obscured under the current system by the large volume of insider reports filed by persons who are statutory insiders but who do not routinely have access to material undisclosed information; and

- a significant reduction in the regulatory burden associated with insider reporting on insiders, issuers and the securities regulatory authorities.

Summary of Changes to the Current Version of NI 55-101

The most significant changes to the current instrument are as follows:

- The proposed instrument contains a new exemption from the insider reporting requirements for senior officers of a reporting issuer or a subsidiary of a reporting issuer who meet the following criteria:

  - the individual is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;

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

  - the individual is not an ineligible insider (as defined in the proposed instrument).

- We have made three changes to Part 4 of the current instrument, which sets out certain actions that a reporting issuer must take before an insider of the reporting issuer may rely on an exemption contained in Parts 2 or 3:

  - The requirement in the current instrument to prepare and maintain a list of insiders exempted from the insider reporting requirement by virtue of certain provisions of the current instrument has been supplemented by a requirement to maintain a list of insiders who are not so exempted.

  - As an alternative to complying with the requirement to maintain a list of exempt insiders and a list of non-exempt insiders, a reporting issuer may instead file an undertaking with the regulator or securities regulatory authority that it will make available to the regulator or securities regulatory authority, promptly upon request, a list containing the information described in such lists as at the time of the request.

  - The proposed instrument also contains a new condition that requires a reporting issuer to establish and maintain policies and procedures relating to restricting the trading activities of its insiders and other persons with access to material undisclosed information concerning the reporting issuer.

- The exemption in the current instrument relating to *acquisitions* of securities under an “automatic securities purchase plan” has been amended to include an exemption for certain *dispositions* of securities that commonly occur under a plan, and that we believe may be reported on an annual basis. These dispositions include:

  - a disposition that is incidental to the operation of the plan and that does not involve a “discrete investment decision” by the director or senior officer; and

  - a disposition that is made to satisfy a tax withholding obligation arising from the distribution of securities under the plan and that results from an irrevocable election by the senior officer or director to fund the tax withholding obligation through a disposition of securities not less than 30 days prior to the date of the disposition.

- The exemption in the current instrument relating to acquisitions of securities under an automatic securities purchase plan has also been amended to provide that the alternative reporting requirement that allows for a consolidated report to be filed within 90 days of the end of the calendar year does not apply if, at the time the alternative report becomes due, the individual is no longer subject to an insider reporting requirement. This situation may arise, for example, in the following circumstances:

- o the individual is no longer an insider at the time the alternative filing requirement becomes due; or

- o the individual has become entitled to rely on an exemption contained in an exemptive relief decision or Canadian securities legislation (such as, for example, an exemption contained in NI 55-101).

Summary of written comments received by the CSA

The CSA published a draft version of the proposed instrument (the draft instrument) and proposed policy (the draft policy) together with a request for comments on May 14, 2004 (collectively, the draft materials).

The CSA received four submissions in response to this request for comments. The CSA have considered these submissions, and the final versions of the proposed instrument and proposed policy being published with this notice reflect the changes made by the CSA.

We have attached to this Notice as Appendix A a list of commenters together with a summary of the comments received and the responses of the CSA.

Changes to the proposed instrument and policy

We have attached to this notice as Appendix B a blackline showing changes made to the draft materials subsequent to the publication of the draft materials for comment on May 14, 2004.

The CSA are of the view that none of the revisions made to the draft materials is material. Accordingly, the proposed instrument and the proposed policy are not being published for a further comment period.

Local Matters

Securities regulatory authorities may also publish in their local jurisdiction, separately or as an Appendix C to this notice, additional information to comply with notice requirements specific to that jurisdiction and to reflect consequential amendments to local securities legislation and policies. Manitoba will not be publishing an Appendix C.

Questions

Please refer your questions to any of:

Denise V. Duifhuis
Senior Legal Counsel
British Columbia Securities Commission
Direct: (604) 899-6792
Fax: (604) 899-6814
dduifhuis@bcsc.bc.ca

Shawn Taylor
Legal Counsel
Alberta Securities Commission
Tel. (403) 297-4770
Fax: (403) 297-6156
shawn.taylor@seccom.ab.ca

Paul Hayward
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
Tel.: (416) 593-3657
Fax: (416) 593-8252
phayward@osc.gov.on.ca

Sylvie Lalonde
Conseillère en règlementation
Autorité des marchés financiers
Tel. (514) 395-0337
Fax: (514) 873-7455
sylvie.lalonde@lautorite.qc.ca

Shirley Lee
Staff Solicitor
Nova Scotia Securities Commission
Phone: (902) 424-5441
Fax: (902) 424-4625
leesp@gov.ns.ca

DATE: February 11, 2005

Appendix A
Summary of Comments & Responses

Comment letters were received from the following commenters:

- Osler Hoskin & Harcourt (Oslers) (Comment letter dated July 30, 2004)
- Ontario Teachers' Pension Plan (Teachers') (Comment letter dated August 12, 2004)
- Talisman Energy Inc. (Talisman) (Comment letter dated August 12, 2004)
- Canadian Bankers Association (the CBA) (Comment letter dated August 13, 2004)

We would like to thank the commenters for taking the time to provide comments on the draft materials. We have carefully considered these comments and have provided summaries of the comments and our responses in the following table.

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
1.	General support for the initiative (Teachers', Talisman and the CBA)	Three of the commenters expressed general support for the initiative, although the support was qualified by reference to the need to address matters raised in the comments.	We acknowledge the support of the commenters and thank them for their comments. We have carefully considered their comments, and amended the Proposed Materials where we believe it appropriate.
2.	General – Definition of "insider" under Canadian securities legislation (CBA)	Rather than distinguishing between reporting and non-reporting insiders, we suggest that the criteria for reporting insiders should be brought into the basic definition of "insider". Regulators have acknowledged that the definition of "insider" in Canadian securities legislation related to developments in the 1960's, at a time when the title "vice-president" generally denoted a senior officer function. The regulators have recognized that it is no longer appropriate to require all persons who are vice-presidents to file insider reports. For the same reasons, it is no longer appropriate to require all vice-presidents to be defined as insiders. We therefore recommend that the regulators take the next logical step, to change the basic definition of "insider" in securities legislation so that the definition can be based on the executive officer definition and non-executive officer exemption criteria.	We agree with this comment and note that such an amendment is contemplated in the Uniform Securities Legislation project. See, for example, the definition of "senior officer" in the USL Consultation Draft that was published in December 2003. Pending the adoption of necessary legislative amendments in each jurisdiction, however, we have decided to proceed with the implementation of the non-executive officer exemption in NI 55-101 as we believe that this change will improve the effectiveness of the insider reporting system and help reduce the regulatory burden associated with insider reporting. In British Columbia's new *Securities Act* (not yet in force), senior officers of an issuer and directors or senior officers of a subsidiary or of a securityholder with more than 10% of the securities of the issuer are required to file insider reports only if the director or senior officer's responsibilities routinely provide the individual with access to inside information about the issuer.
3.	Section 1.1 Definitions "acceptable summary form" (CBA)	For the annual reporting of acquisitions (and specified dispositions) in automatic purchase plans, we would suggest that the wording be amended slightly to allow for the reporting of all plans together, or individual plans in summary form. A number of issuers offer securities categories that identify certain plans, to facilitate	We have amended the definition of "acceptable summary form" to allow for reports to be made on a plan-by-plan basis or on an aggregate basis combining the total of all plans.

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
		reporting based on the plan statements. Some insiders find it easier to keep track of what has been reported by comparing totals to the plan statements. Others prefer to combine the annual totals for all the plans or, plan-by-plan, into the common share category. We believe that it is important to make the reporting process manageable for the individual, so long as the required information is reported in a standard and clear manner. Acknowledgement of this currently accepted flexibility, we believe, can be accomplished by deleting the word "all" from subparagraph (a) of the definition of "acceptable summary form", or by including a comment in the Companion Policy.	
4.	Section 1.1 Definitions "investment issuer" (CBA)	A comparison of some MRRS decisions that have been issued subsequent to CSA Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* and the proposed amendments to NI 55-101, suggests that the relief under the proposed amendment would be more restrictive, given the proposed definition of "investment issuer". The difference lies in the exclusion of subsidiaries in subparagraph (b) of the definition of "investment issuer". We recommend that subparagraph (b) be deleted. … It is not consistent, in our view, to tie the reporting requirement to the status of whether that investment issuer is a subsidiary of the bank or not, as distinct from, and in addition to the fundamental exemption criteria that apply for all other securities. MRRS decisions that have been issued pursuant to CSA Staff Notice 55-306 rest on exemption criteria that are based on officer function and access to information, and do not distinguish between types of investment issuers. The language of the NI 55-101 amendment would, in our mind, require revising the existing instructions to all of these people and would result in unnecessary reporting, which should continue to	We have amended the definition of "investment issuer" to delete the restriction in subparagraph (b) relating to subsidiaries. We agree that the exclusion of subsidiaries in the definition of "investment issuer" is unnecessary, since the objectives are met by the basic exemption criteria, which would exclude the exemption of any officer who receives or has access to undisclosed material information about the particular subsidiary investment issuer. We have added language to the Proposed Policy to clarify that the reference to "material facts or material changes concerning the investment issuer" includes 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 insider issuer level (i.e., the parent issuer) 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

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
		be exempt. We believe that the exclusion of subsidiaries in the definition of "investment issuer" is also unnecessary, since the objectives are met by the basic exemption criteria, which would exclude the exemption of any officer who receives or has access to undisclosed material information about the particular subsidiary investment issuer.	would also generally represent a "material fact or material change concerning the investment issuer." Accordingly, a director or senior officer of the parent reporting 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.
5.	Section 1.1 Definitions "major subsidiary" (Oslers)	The definition of "major subsidiary" may be overinclusive for larger issuers with international operations. Such issuers may organize certain subsidiaries solely for the purposes of handling international sales and other subsidiaries solely for purposes of holding an interest in assets. Such subsidiaries may technically fall within the definition of "major subsidiary" even though the subsidiary is not material to the issuer in terms of being a principal business unit, division or function of the reporting issuer. You should consider whether to modify the definition of "major subsidiary" to address those "major subsidiaries" which do not constitute a principal business unit, division or function of the reporting issuer.	We have not amended the Proposed Instrument in response to this comment as we believe that the proposed amendment would have the effect of significantly narrowing the scope of the definition of "major subsidiary". Under the current definition of "major subsidiary", a subsidiary of a reporting issuer will be a "major subsidiary" if • the assets of the subsidiary represent 10% or more of the assets of the reporting issuer on a consolidated basis, or • the revenues of the subsidiary represent 10% or more of the revenues of the reporting issuer on a consolidated basis. Generally we would expect that a subsidiary of a reporting issuer that crosses either of these 10% thresholds will be material to the reporting issuer regardless of whether the subsidiary "is … material to the issuer in terms of being a principal business unit, division or function of the reporting issuer". We also believe that a test based on consolidated asset and consolidated revenue thresholds is easier to apply than a

#	Theme	Comments	Responses
National Instrument 55-101 – *Insider Reporting Exemptions* **Summary of Comments**			
			test based on whether a subsidiary constitutes "a principal business unit, division or function of the reporting issuer". Where an issuer has a subsidiary that crosses a 10% threshold, but the issuer can demonstrate that the subsidiary's performance is not material to the issuer, the CSA may be prepared to grant exemptive relief on an application basis.
6.	Section 1.1 Definitions "major subsidiary" (Oslers)	For subsidiaries of issuers with worldwide operations it is common to appoint individuals as officers or directors to meet local legal or residency requirements, even though such individuals do not have substantive authority. (For example, a Canadian subsidiary of a U.S. company may appoint a resident Canadian individual as a director to meet residency requirements under Canadian corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.) There should be an exemption for directors even of "major subsidiaries" where the powers of the director have been curtailed by statute and agreement.	We have not amended the Proposed Instrument in response to this comment. Where an individual has been appointed as a director of a major subsidiary but does not have any substantive authority or access to material undisclosed information in the ordinary course, the CSA may be prepared to grant exemptive relief on an application basis.
7.	Section 2.3 -- Reporting Exemption (Certain Senior Officers) Individuals who hold multiple positions (Oslers)	It is common for senior officers of an issuer to act as directors of subsidiaries of the issuer. The exemptions do not appear to be available to senior officers who would be exempt from the insider reporting requirements but for the fact that they also act as directors of a subsidiary of the reporting issuer, even if the subsidiaries for which they act as directors are not "major subsidiaries". This is because the condition under subsection (c) of Sections 2.1, 2.2 and 2.3 cannot be met by individuals who hold multiple positions. There is no policy reason for this and we suggest that the exemptions be available to those individuals as well.	We agree with this comment and have amended the condition in sections 2.1, 2.2 and 2.3 to address the situation of multiple positions.
8.	Sections 2.2 and 2.4	Section 2.4 of NI 55-101 provides an exemption from the insider reporting requirement only for a senior officer of "a reporting issuer or a subsidiary of the reporting issuer"	We agree with this comment and have amended the definition of "investment issuer" and the exemption for trades in securities of an investment issuer accordingly.

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
	(Teachers)	in respect of securities of an "investment issuer" (a second reporting issuer that the first reporting issuer is an insider of). We believe that section 2.4 should be extended so that a senior officer of a company that is not a reporting issuer would be exempt from the insider reporting requirement in respect of securities of an "investment issuer", so long as that senior officer meets conditions equivalent to those set out in subsections 2.4(b) and (c). ***We do not believe that there is a reasonable basis upon which an exemption of this type should be available for the senior officers of a company that is a reporting issuer, but not also available for the senior officers of a company that is not a reporting issuer.***	
9.	Subsection 4.1(a) – Insider Lists and Policies (CBA)	In a large institution, we question the utility of the [even infrequent] delivery of lists of hundreds of exempt vice-presidents when a valid process is in place to determine the reporting insiders on the basis of the criteria. We note that the compilation can be labour intensive due to the global nature of our members' operations and due to differences in personnel data support systems and variations in local/translated titles. We question the point of labelling and listing people who fail to meet the criteria for reporting. We, therefore, recommend the removal of the requirement to file a list of all insiders of the reporting issuer who are exempted from the insider reporting requirement.	The Proposed Instrument does not contain a requirement to file (or otherwise make public) a list of all insiders of the reporting issuer who are exempted from the insider reporting requirement. This represents a significant change from the approach described in CSA Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* and reflects the terms of recent exemptive relief decisions for such relief. The Proposed Instrument does require (as a condition of the exemption being available) that the insider notify the reporting issuer that the insider intends to rely on the exemption, and that the reporting issuer confirm that it will maintain a list of insiders of the reporting issuer exempted under NI 55-101. However, the current version of NI 55-

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
			101 contains a similar requirement to maintain a list of exempted insiders in s. 4.1. Accordingly, this requirement does not represent a change from the current version of NI 55-101. The requirement to maintain a list of insiders who are relying on an exemption from the insider reporting requirements is necessary in order to preserve an independent ability to monitor whether the insiders who are relying on the exemption are in fact entitled to rely on the exemption. The requirement to maintain a list provides a practical means by which the reporting issuer, and the securities regulatory authorities, can check to see whether such reliance is appropriate. We do not believe that this requirement should prove onerous for a public company, particularly a company that is large enough to have hundreds of vice-presidents who would otherwise be eligible for the exemption. A company could, for example, simply advise its insiders that • they may be entitled to rely on an exemption in NI 55-101 from the insider reporting requirements under Canadian securities law, and • if they wish to rely on this exemption, they should notify a designated contact person who will maintain a list of people relying on the exemption. We also note that this requirement to maintain a list should be substantially less onerous than the current requirement that all such insiders file insider reports.
10.	Subsection 4.1(a) – List of exempt insiders	As well, we have previously brought to your attention that there are related privacy legislation considerations in connection with the contemplated lists. A number of	We do not believe it is necessary or appropriate to include the language "to the extent permitted by law" in the terms of the exemption for the following reasons.

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS*			
SUMMARY OF COMMENTS			
	(CBA)	MRRS decisions recognize this by providing that the issuer will make a list available to the regulators upon request "to the extent permitted by law". We request inclusion of the same language in the National Instrument.	First, as noted above, the current version of NI 55-101 contains a similar requirement in s. 4.1. Accordingly, the requirement to maintain a list of exempt insiders in the Proposed Instrument does not represent a change from the current version of NI 55-101. Secondly, we note that the condition relates to an exemption from the insider reporting requirement. There is no obligation for any insider to rely on this exemption. If an insider wishes to rely on this exemption, we believe it is reasonable to require, as a condition to the exemption being available, that the insider notify the issuer and if necessary provide a consent to the issuer. In this way, the issuer can maintain a list of its insiders who are relying on the exemption. We believe that a list requirement is reasonable as it provides for a practical means by which the reporting issuer, or the securities regulatory authorities, can review whether reliance by the insider on the exemption is appropriate.
11.	Subsection 4.1(c) – Reasonable policies and procedures relating to insider trading (Oslers)	Subsection 4.1(c) requires that a reporting issuer maintain reasonable written policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer. We agree that it is best practice for issuers to have an insider trading policy; however, the Proposed Instrument is not the appropriate place to introduce a requirement that all reporting issuers prepare and maintain such policies.	We do not agree with the suggestion that it is a "best practice" for reporting issuers to have an insider trading policy. We believe that all reporting issuers should have some form of insider trading policy. However, we accept that an exemptions instrument is not the appropriate place to introduce a requirement that all reporting issuers prepare and maintain such policies regardless of whether or not they (or their insiders) rely on the Proposed Instrument. Accordingly, we agree with the comment that the requirement to establish an insider trading policy should

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
		The requirement in subsection 4.1(c) should be a precondition only to relying on the Proposed Instrument, as it is currently for staff to support applications for relief from insider reporting requirements (CSA Staff Notice 55-306 – *Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents*), and not a positive obligation imposed upon all reporting issuers regardless of whether or not they rely on the Proposed Instrument. We suggest, therefore, that the introductory language to section 4.1 be redrafted as follows to clarify this: "Subject to section 4.2, a reporting issuer which wishes to rely on this Instrument shall prepare and maintain".	be a precondition only to relying on the Proposed Instrument. The exemptions in Parts 2 and 3 of the Proposed Instrument have been redrafted to clarify that they are subject to the preconditions in Part 4.
12.	Subsection 4.1(c) – Reasonable policies and procedures relating to insider trading (Talisman)	Talisman is very concerned with one aspect of proposed NI 55-101, s. 4.1(c), which would impose a new legal requirement on reporting issuers to monitor and restrict the trading activities of insiders and other persons with access to material undisclosed information. Currently, there is no legal requirement for reporting issuers in Canada to either monitor or restrict the trading of insiders. Section 6.11 of National Policy 51-201 *Disclosure Standards* currently recommends as a "best practice" that reporting issuers "adopt an insider trading policy that provides for a senior officer to approve and monitor the trading activity of all of our insiders, officers and senior employees". Talisman submits that the "best practices" approach taken by NP 51-201 is more appropriate than the legally mandated approach taken in the proposed amendments to NI 55-101 for the reasons set forth below. Talisman submits that the following considerations support a continuation of the "best practices" approach: 1. Such an approach is more consistent with the	We have amended the Proposed Instrument to clarify that the requirement to establish and maintain policies and procedures relating to insider trading does not represent an independent legal requirement for reporting issuers to monitor or restrict the trading of insiders. Rather, it is a precondition to the availability of the exemptions contained in Parts 2 and 3 of the Proposed Instrument. This precondition mirrors a similar precondition described in CSA Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents*. In the context of the staff notice, we requested a copy of the issuer's policies and procedures as part of the application as we wanted to ensure that the issuer had in place a minimally acceptable set of policies and procedures relating to insider trading before recommending this relief. We believe this is important because several of the new exemptions, and in particular the "non-executive officer exemption", represent a shift from a *title-based* regime – all persons who hold a stipulated title, such as "vice-president", must report – to more of a functional or

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
		general approach to corporate governance taken by Canadian securities regulators; 2. Such an approach would maintain more consistency between Canadian and US securities laws, as US securities laws do not require registrants to maintain policies that monitor and restrict insider trading; and 3. Such an approach would permit reporting issuers to craft policies and procedures that best fit their organizations, without risk of second-guessing by securities regulators as to whether their policies are "reasonable" or not.	principles-based regime – only those persons who hold the stipulated title *and who have access to material undisclosed information in the ordinary course* must report. In our view, where the test is tied to an assessment of the individual's function and access to material undisclosed information, there is a greater need for an issuer to have appropriate policies and procedures in place. The issuer should have a view, for example, as to what information is material and which of its senior officers routinely have access to material undisclosed information and should be filing insider reports. As explained in the Proposed Policy, the Proposed Instrument does not seek to prescribe the content of such policies and procedures. It merely requires that such policies and procedures exist and that they include, among other things, a requirement that the issuer maintain the lists described in subparagraphs 4.1(b)(i) and (ii) or file an undertaking in relation to such lists. We have added additional language to the Proposed Policy to clarify that an issuer's policies and procedures need not necessarily be consistent with National Policy 51-201 *Disclosure Standards* in order for the exemptions in Parts 2 and 3 of the Instrument to be available.
13.	Section 5.4 -- "Specified Disposition of Securities" General Support (CBA)	We support the inclusion of the specified disposition amendment.	We thank the commenter for the support.
14.	Section 5.4 -- "Specified Disposition of	The meaning of the phrase "discrete investment decision" is very unclear and the guidance in the companion policy	We have added additional language to the Companion Policy to clarify the concept of "discrete investment

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
	Securities” Meaning of the phrase “discrete investment decision” (Oslers)	is limited. It would be helpful to confirm, for example, that the decision to enrol in an automatic securities purchase plan is not a “discrete investment decision”. In addition, most automatic securities purchase plans enable the participant to give revised instructions from time to time respecting the level of his or her participation in the plan. It would be helpful to confirm that a participant does not, by giving a revised instruction affecting the individual’s level of ongoing participation in the plan, thereby make a “discrete investment decision”.	decision”. The term “discrete investment decision” refers to the exercise of discretion involved in a specific decision to purchase, hold or sell a security. The purchase of a security as a result of the application of a pre-determined, mechanical formula does not represent a discrete investment decision (other than the initial decision to enter into the plan in question). The reference to “discrete investment decision” in s. 5.4 is intended to reflect a principles-based limitation on the exemption for permitted dispositions under an automatic securities purchase plan. Accordingly, in interpreting this term, you should consider the principles underlying the insider reporting requirement – deterring insiders from profiting from material undisclosed information and signalling insider views as to the prospects of an issuer -- and the rationale for the exemptions from this requirement. In our view, the decision to *enroll* in an automatic securities purchase plan *does* involve a discrete investment decision. For example, a decision to participate in a share purchase plan under which a participant contributes 10% of each paycheque for the purchase of securities represents a decision to invest 10% of the participant’s salary in securities of the issuer. Each subsequent purchase in accordance with the initial instructions does not represent a *new* investment decision. However, a decision to revise the instructions or terminate participation in the plan generally will represent a new investment decision (or an alteration of the original investment decision). This is reflected in s. 4.2 of the current version (and section 6.5 of the amended version) of the Companion Policy.

#	Theme	Comments	Responses
NATIONAL INSTRUMENT 55-101 – *INSIDER REPORTING EXEMPTIONS* **SUMMARY OF COMMENTS**			
			4.2 Design and Administration of Plans - Part 5 of the Instrument provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation in an automatic securities purchase plan, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a particular plan of an issuer, the issuer should design and administer the plan in a manner which is consistent with this limitation. Accordingly, where a plan allows a participant to give revised instructions from time to time respecting the level of his or her participation in the plan, the issuer should design and administer the plan in a manner that ensures the insider is not able to make "discrete investment decisions".

Appendix B

[Blackline May 14, 2004 draft to final draft of instrument and policy]