

**NOTICE OF PROPOSED 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**

This Notice is accompanied by a proposed National Instrument and a Companion Policy, each of which is being published for comment.

Substance and Purpose of Proposed National Instrument and Companion Policy

The purpose of the proposed National Instrument is to provide an exemption from the obligation to file insider reports under Canadian securities legislation 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. The proposed National Instrument also permits directors and senior officers of reporting issuers to report acquisitions of securities under automatic securities purchase plans on an annual basis in most circumstances.

The proposed National Instrument is an initiative of the Canadian Securities Administrators (the "CSA"), and is proposed to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Nova Scotia and Ontario, as a Commission regulation in Saskatchewan and as a policy in each of the other 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 It is proposed that these policies be repealed. 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 Quebec 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 Quebec, 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 Quebec 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 and at prices and times determined by established formula or criteria and the only investment decision by the insider is the decision to participate in the plan or cease participation 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 and in respect of purchases made under automatic securities purchase plans. The proposed Companion Policy makes it clear that these orders are, except as otherwise provided in them, still 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.

The proposed Companion 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

The proposed National Instrument is divided into five parts.

Part 1 contains a definition section.

Part 2 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.

Part 3 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 the material fact or material change. 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 Quebec, as under the Québec *Securities Act* directors and senior officers of affiliates of insiders do not have insider reporting obligations.

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

Part 5 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 comes within the exemption.

Summary of Proposed Companion Policy

The proposed Companion Policy has five parts. The first part sets out the purpose of the proposed Companion Policy. The second part provides commentary on the definition of "automatic securities purchase plan". The third part makes it clear that the proposed National Instrument only provides an exemption from the insider reporting requirement and not from the provisions in Canadian securities legislation imposing liability for improper insider trading. The fourth part deals with the reporting of acquisitions or dispositions by a director or senior officer of a reporting issuer of securities, other than under an automatic purchase plan. Those transactions must be reported within the time period required by securities legislation. The report filed for acquisitions under the automatic purchase plan must reconcile acquisitions under the plan with other acquisitions or dispositions. The fifth part states that previous exemptive orders are, except as otherwise provided in them, still in effect notwithstanding the implementation of the proposed National Instrument.

Terms used in the proposed Companion 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 Manitoba as a rule pursuant to section 149.1 of the *Securities Act* (Manitoba).

Related Instruments

The proposed National Instrument and proposed Companion Policy are related to each other as they deal with the same subject matter. In Manitoba, the proposed Companion Policy is related to sections 8 to 17 of the *Securities Act* (Manitoba) and Part IV of the Regulation to the Act.

Alternatives Considered

Consideration was given to continuing the current practice of granting the relief set out in the proposed 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 has been prepared to 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.

Unpublished Materials

In proposing the National Instrument and Companion Policy, the CSA has 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 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 5 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.

Comments

Interested parties are invited to make written submissions with respect to the proposed National Instrument and Companion Policy. Submissions received by November 19, 1999 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 Daniel P. Iggers, 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,
Secretary
Commission des valeurs mobilières du Québec
Tour de la Bourse
C.P. 246, 22nd Floor
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
(604) 899-6748

Agnes Lau
Deputy Director, Capital Markets
Alberta Securities Commission
(403) 422-2191

Barbara Shourounis
Director
Saskatchewan Securities Commission
(306) 787-5645

Douglas Brown
Counsel
Manitoba Securities Commission
(204) 945-2548

Paul De Souza
Forensic Accountant, Enforcement Branch
Ontario Securities Commission
(416) 593-8295

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

Proposed National Instrument and Companion Policy

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

DATED: September 3, 1999.

**NATIONAL INSTRUMENT 55-101
EXEMPTION FROM CERTAIN INSIDER
REPORTING REQUIREMENTS¹**

PART 1 DEFINITIONS²

1.1 Definitions - In this Instrument

"automatic securities purchase plan" means a plan of a reporting issuer to facilitate the acquisition of its securities if the timing of acquisitions of securities, the number of securities acquired by each director or senior officer of the reporting issuer under the plan and the price paid for securities are established by formula or criteria set out in the plan; and

"significant subsidiary"³ means a subsidiary of a reporting issuer if

¹ This proposed National Instrument is derived from Ontario Securities Commission Policy Statement 10.1, British Columbia Local Policy Statement 3-14 and Policy Statement No. Q-10 of the Commission des valeurs mobilières du Québec which set out guidelines for applications for exemptions from insider reporting obligations. The proposed National Instrument is expected to be adopted as a rule in British Columbia, Alberta, Manitoba, Nova Scotia and Ontario, as a Commission regulation in Saskatchewan and as a policy in all other jurisdictions represented by the CSA.

² A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

³ This definition is consistent with the comparable definitions in the British Columbia and Quebec policies referred to in note 1. It differs from the Ontario policy in one important respect. A major subsidiary in the Ontario policy included a subsidiary whose directors and senior officers, in the ordinary course, received notice of material facts or changes with respect to a reporting issuer before public disclosure. As a result, if some or all of the directors and senior officers received such information in any capacity, the subsidiary would constitute a major subsidiary and all of the directors and officers would be denied the exemption notwithstanding that certain directors and officers would not have been privy to the information. It has been decided that only those directors and senior officers who actually receive this type of information should be denied the exemption. This has been dealt with in section 2.2 of this Instrument.

- (a) the value of the assets of the subsidiary, on a consolidated basis with its subsidiaries, as reflected in the most recent annual audited balance sheet of the reporting issuer that the reporting issuer has filed, are 10 percent or more of the consolidated assets of the reporting issuer shown on that balance sheet, or
- (b) the revenues of the subsidiary, on a consolidated basis with its subsidiaries, as reflected in the most recent annual audited statement of income and loss of the reporting issuer that the reporting issuer has filed, are 10 percent or more of the consolidated revenues of the reporting issuer shown on that statement of income and loss.

PART 2 EXEMPTION FROM INSIDER REPORTING FOR DIRECTORS AND SENIOR OFFICERS OF CERTAIN SUBSIDIARIES

2.1 Reporting Exemption - Subject to section 2.2, the insider reporting requirement⁴ does not apply to a director or senior officer of a subsidiary of the reporting issuer in respect of securities of the reporting issuer.

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

- (a) receives, in the ordinary course, information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed;
- (b) is a director or senior officer of a significant subsidiary; or
- (c) is also an insider of the reporting issuer in a capacity other than as a director or senior officer of the subsidiary and is not otherwise exempted from the insider reporting requirement.

4

The term "insider reporting requirement" is defined in the proposed amendment to National Instrument 14-101 Definitions as "the requirement in securities legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer."

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

3.1 Québec - This Part does not apply in Quebec.⁵

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

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

- (a) receives, in the ordinary course, information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed;
- (b) is also an insider of the reporting issuer in a capacity other than as a director or senior officer of an affiliate of an insider of the reporting issuer and is not otherwise exempted from the insider reporting requirement; or
- (c) is a director or senior officer of a company that supplies goods or services to the reporting issuer or to a subsidiary of the reporting issuer or has contractual arrangements with the reporting issuer or a subsidiary of the reporting issuer, and the nature and scale of the supply or the contractual arrangements could reasonably be expected to have a significant effect on the market price or value of the securities of the reporting issuer.⁶

⁵ A director or senior officer of an affiliate of an insider of the reporting issuer is not an insider under the *Securities Act* (Québec).

⁶ This is an expansion of the provision in the British Columbia and Ontario policies referred to in note 1 as it goes beyond the supply of goods and services to cover other contractual arrangements and removes the reference to factors affecting the supply of goods or services and instead refers to the nature and scale of the supply or the contractual arrangements.

**PART 4 REPORTING OF PURCHASES UNDER AUTOMATIC SECURITIES
PURCHASE PLANS**

4.1 Reporting Exemption - Subject to sections 4.2 and 4.3, the insider reporting requirement does not apply to the acquisition by a director or senior officer of a reporting issuer of securities of the reporting issuer through an automatic securities purchase plan.

4.2 Limitation

- (1) The exemption in section 4.1 is not available to an insider that beneficially owns, directly or indirectly, voting securities of the reporting issuer, or exercises control or direction over voting securities of the reporting issuer, or a combination of both, that carry more than 10 percent of the voting rights attaching to all outstanding voting securities of the reporting issuer.
- (2) In Quebec, subsection (1) does not apply.
- (3) In Quebec, the exemption in section 4.1 is not available to a person who exercises control over more than 10 percent of a class of shares of a reporting issuer to which are attached voting rights or an unlimited right to a share of the profits of the reporting issuer and in its assets in case of winding-up.

4.3 Reporting Requirement - An insider that is exempt from the insider reporting requirement under section 4.1 shall report, in the form prescribed for insider trading reports under securities legislation, all acquisitions of securities under the automatic securities purchase plan that have not previously been reported by or on behalf of the insider

- (a) if any securities acquired under the automatic securities purchase plan during any financial year of the reporting issuer are disposed of or transferred during the financial year, within the time required by securities legislation for reporting the disposition or transfer; and
- (b) if any securities acquired under the automatic securities purchase plan during any financial year of the reporting issuer are not disposed of or

transferred during the financial year, within 90 days of the end of the financial year of the reporting issuer.

PART 5 LIST OF EXEMPTED INSIDERS

5.1 List of Exempted Insiders - A reporting issuer shall maintain a list of all insiders of the reporting issuer exempted by Parts 2 and 3 of this Instrument and the basis on which each insider comes within the exemption.

PART 6 EFFECTIVE DATE

6.1 Effective Date - This National Instrument comes into force on ! .

**NATIONAL INSTRUMENT 55-101
EXEMPTION FROM CERTAIN INSIDER
REPORTING REQUIREMENTS**

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

PART 1 PURPOSE

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

PART 2 DEFINITIONS

2.1 **Definitions** - The definition of automatic securities purchase plan in the Instrument includes employee share purchase plans and dividend reinvestment plans so long as the criteria in the definition are met. The definition does not include the optional cash purchase components of dividend reinvestment plans or share purchase plans and does not include stock option plans as those components and plans cannot meet the criteria.

PART 3 SCOPE OF EXEMPTION

3.1 **Scope of Exemption** - The exemption under the Instrument is only an exemption from the insider reporting requirement and is not an exemption from the provisions in Canadian securities legislation imposing liability for improper insider trading.

PART 4 NON-PLAN ACQUISITIONS

4.1 **Non-Plan Acquisitions**

(1) Section 4.1 of the Instrument provides an exemption from the insider reporting requirement for acquisitions by a director or senior officer of a reporting issuer of securities of the reporting issuer through an automatic securities purchase plan.

(2) A person relying on this exemption must report all acquisitions under the

automatic securities purchase plan no later than 90 days after the end of the financial year of the reporting issuer.

- (3) This section does not relieve a director or senior officer from his or her insider reporting obligations in respect of any other acquisitions or dispositions of securities.
- (4) A director or senior officer must report other acquisitions or dispositions of securities within the time periods prescribed by securities legislation. The report for those acquisitions or dispositions does not have to include acquisitions under the automatic securities purchase plan unless section 4.3 of the Instrument requires the reporting of those acquisitions. It would however be prudent practice for the director or senior officer to indicate in the "Remarks" section of the insider report that he or she participates in an automatic securities purchase plan and that purchases under that plan have not been included in the report.
- (5) The report that an insider files for acquisitions under the automatic securities purchase plan in accordance with section 4.3 of the Instrument must reconcile the acquisitions under the plan with other acquisitions or dispositions by the director or senior officer so that the report provides an accurate listing of the director's or senior officer's total holdings. As required by securities legislation, the report filed by the insider must differentiate between securities held directly and indirectly and must indicate the registered holder if securities are held indirectly. In the case of securities acquired through a plan, the registered holder is often a trustee or plan administrator.

PART 5 EXISTING EXEMPTIONS

- 5.1 Existing Exemptions** - If the Canadian securities regulatory authorities have issued orders in the past exempting certain insiders, on conditions, from all or part of the insider reporting requirement, these orders remain in effect and, subject to their terms, can be relied on despite implementation of the Instrument.