

**Notice of National Instrument 55-104
Insider Reporting Requirements and Exemptions
and Related Companion Policy 55-104CP
and
Repeal of Related Predecessor Instruments**

Introduction

We, the Canadian Securities Administrators (CSA), are adopting a new insider reporting regime set out in:

- National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the New Instrument); and
- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (the New Policy) (together, the New Materials).

We are also repealing or withdrawing the following predecessor instruments and policies:¹

- National Instrument 55-101 *Insider Reporting Exemptions* (NI 55-101);
- Companion Policy 55-101CP *to National Instrument 55-101 Insider Reporting Exemptions* (55-101CP);
- Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* (MI 55-103);
- Companion Policy 55-103CP *to Multilateral Instrument 55-103 Insider Reporting for Certain Derivative Transactions (Equity Monetization)* (55-103CP); and
- In British Columbia, BCI 55-506 *Exemption from insider reporting requirements for certain derivative transactions* (BCI 55-506) (collectively, the Current Materials).

We are also making related consequential amendments to:

- Multilateral Instrument 11-102 *Passport System*;
- National Instrument 14-101 *Definitions*; and
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) (together, the Consequential Amendments).

Some jurisdictions are also making other local amendments. You will find those local amendments in the version of Appendix G published in those local jurisdictions.

Additional information about the adoption processes for some jurisdictions is described in Appendix H published in that jurisdiction.

In some jurisdictions, Ministerial approval is required for these changes. Provided all necessary

¹ MI 55-103 and 55-103CP have been adopted in all jurisdictions other than British Columbia. In British Columbia, requirements similar to those contained in MI 55-103 were introduced into the *Securities Act* (British Columbia) in 2004. Exemptions similar to those contained in MI 55-103 were introduced in BCI 55-506.

approvals are obtained, the New Materials and Consequential Amendments will come into force on April 30, 2010 and the Current Materials will be repealed or withdrawn on this date.

1. Substance and Purpose of the New Materials

The New Instrument sets out the main insider reporting requirements and exemptions from those requirements for insiders of reporting issuers, except in Ontario. In Ontario, the main insider reporting requirements will remain in the *Securities Act* (Ontario). Despite this difference, the substance of the requirements for insider reporting will be the same across the CSA jurisdictions.

The New Instrument consolidates the main insider reporting requirements and exemptions in a single national instrument. This will make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance. The New Instrument also reflects changes to the insider reporting regime that we think will improve its effectiveness. Specifically, the New Instrument will, when compared to the current insider reporting regime,

- significantly reduce the number of persons required to file insider reports;
- after a six-month transition period, accelerate the filing requirement from 10 calendar days to five calendar days;
- simplify and make more consistent the reporting requirements for stock-based compensation arrangements; and
- facilitate insider reporting of stock-based compensation arrangements by allowing issuers to file an “issuer grant report” in a similar manner to the current “issuer event report”.

The New Policy provides guidance as to how we would interpret or apply certain provisions of the New Instrument.

In connection with this initiative, CSA staff will also be amending CSA Staff Notice 55-308 *Questions on Insider Reporting*, CSA Staff Notice 55-310 *Questions and Answers on the System for Electronic Disclosure by Insiders (SEDI)* and CSA Staff Notice 55-312 *Insider reporting guidelines for certain derivative transactions (equity monetization)* and withdrawing CSA Staff Notice 55-314 *Use of the terms “senior officer”, “officer”, and “insider” in National Instrument 55-101 Insider Reporting Exemptions*.

2. Prior publications

The CSA previously requested comment about some of the proposals reflected in the New Materials on two occasions. In October 2006, we published a Notice and Request for Comment relating to amendments to NI 55-101. As part of that Notice, we outlined at a high level proposals for future amendments to Canadian insider reporting requirements, including amendments that would consolidate the insider reporting requirements in a single instrument, refocus the insider reporting requirements on a smaller, core group of insiders, and accelerate the filing deadlines. We referred to these proposals as the “Phase 2 amendments”.

On December 18, 2008, we published the New Materials and Consequential Amendments for comment (the December 2008 Materials). The Notice and Request for Comment published on

December 18, 2008 contains further background on the Phase 2 amendments.

3. Summary of Written Comments Received by the CSA

The comment period for the December 2008 Materials expired on March 19, 2009. We received written submissions from 27 commenters. We considered the comments received and thank all the commenters. The names of the commenters are contained in Appendix B of this notice and a summary of their comments, together with our responses, are contained in Appendix C of this notice.

4. Summary of Changes to the December 2008 Materials

After considering the comments received, we made some revisions to the December 2008 Materials that are reflected in the New Materials and Consequential Amendments. As these changes are not material, we are not republishing the New Materials or Consequential Amendments for a further comment period.

See Appendix A for a summary of key changes made to the December 2008 Materials.

5. Amendments to local rules and concurrent legislative actions

CSA members of some jurisdictions are publishing a separate local notice regarding amendments to certain local rules. These amendments include changes to local exemptions or the repeal of local exemptions that are no longer considered necessary or appropriate.

Local consequential amendments are located in Appendix G published in each jurisdiction where required. Other information required by a local jurisdiction in order to adopt the New Instrument are in Appendix H which will only be published in that jurisdiction. In addition, these notices may also include information relating to proposed proclamation dates for amendments to securities legislation that were made as part of the Highly Harmonized Securities Legislation initiative in 2006.

6. Impact on investors

The New Instrument will benefit investors by:

- focusing the insider reporting requirement on a core group of insiders with the greatest access to material undisclosed information and the greatest influence over the reporting issuer;
- making more consistent the reporting requirements for stock-based compensation arrangements; and
- after a six month transition period, accelerating the filing deadline from 10 calendar days to five calendar days, which will make this important information available to the market sooner.

7. Where to find more information

The Notice also contains the following appendices:

1. Appendix A – Summary of key changes made to the December 2008 Materials
2. Appendix B – List of commenters
3. Appendix C – Summary of comments and CSA responses
4. Appendix D – New Instrument
5. Appendix E – New Policy
6. Appendix F – Consequential and other amendments
7. Appendix G – Local Amendments
8. Appendix H – Local Information

The New Materials and Consequential Amendments are available on websites of CSA members, including:

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

Questions

Please refer your questions to any of:

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APPENDIX A

Summary of Key Changes to the December 2008 Materials

New Instrument

1. **Report by certain designated insiders for historical transactions** (Parts 1 and 3) – We have amended the New Instrument to narrow the class of persons required to file these reports to the CEO, CFO, COO and each director of the issuer and to require these reports to be filed on SEDI rather than SEDAR.
2. **Definition of reporting insider** (Part 1) – We have moved the definition of reporting insider to subsection 1(1) of the New Instrument and amended the definition as follows:
 - (a) in paragraph (a), we replaced the terms “chief executive officer, the chief operating officer or the chief financial officer” with the terms “CEO, CFO or COO”, which are defined to include an individual who holds these titles and any other individual who acts in a similar capacity for the issuer.
 - (b) in paragraph (c), we deleted the reference to “a major subsidiary”.
 - (c) in paragraph (e) (paragraph (f) of the New Instrument), we replaced the reference to “officer” with “every CEO, CFO and COO of the management company” to narrow the class of persons at management companies who are determined to be reporting insiders. This change achieves greater consistency among the individuals at the issuer and management company level who are determined to be reporting insiders.
 - (d) deleting paragraph (h) [*a person or company designated or determined to be an insider under subsection 1.2(1)*]. These individuals and companies will only be reporting insiders if they otherwise come within the definition of “reporting insider”.
 - (e) in paragraph (i), we deleted the reference to “major subsidiary”.
3. **Transition period to precede accelerated filing deadline for insider reports** (Parts 2, 3 and 10) – We have included a transition provision for the accelerated filing deadline for subsequent insider reports that will delay its introduction by six months from the effective date of the New Instrument. This transition period provides insiders and issuers time to become familiar with the reporting requirements in the New Instrument and to make necessary arrangements with third-party service providers.
4. **Reliance on Reported Outstanding Shares** (Part 1) – We have added a new provision to Part 1 of the New Instrument based on section 2.1 of NI 62-103.
5. **Issuer Grant Report** (Part 6) – We have amended the New Instrument to permit issuers to file the issuer grant report on SEDI rather than SEDAR.

6. **Exemption for “specified dispositions” in connection with issuer grants** (Part 6) – We amended the New Instrument to include in Part 6 a similar exemption for “specified dispositions” to the one in Part 5.
7. **Reporting exemption (nil report)** (Part 9) – We amended section 9.4 to clarify that the reporting exemption is not available to a reporting insider that is a significant shareholder based on post-conversion beneficial ownership.
8. **Exemption for certain agreements, arrangements or understandings** (Part 9) – We amended section 9.7 to include an exemption analogous to the exemption in paragraph 2.2(a) of MI 55-103 and Part 3 of BCI 55-506.

New Policy

The New Policy contains expanded guidance on various topics including:

1. The term reporting insider (section 1.4);
2. Persons and companies designated or determined to be insiders (section 1.6);
3. The concept of reporting insider, including guidance relating to the interpretation of the basket criteria in paragraph (i) of the definition of “reporting insider” and the meaning of “significant influence” (section 3.1);
4. When ownership passes for the purposes of the insider reporting requirement (section 3.2);
5. The meaning of “control or direction” (section 3.3); and
6. Contravention of insider reporting requirements (section 10.1).

Consequential Amendments

We have made the following changes to the proposed consequential amendments that were part of the December 2008 Materials:

1. **Form 51-102F5 Information Circular of National Instrument 51-102 Continuous Disclosure Obligations** – We have withdrawn the proposed requirement for an issuer to disclose whether insiders have been subject to late filings fees at this time. We may reintroduce the proposal with modification in the future at which time it would be subject to a further public comment process.
2. **National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues** – We revised the proposed amendment so that an eligible institutional investor is exempt from the insider reporting requirement in the New Instrument – including the requirements relating to related financial instruments and

agreements, arrangements and understandings contemplated in Part 4 of the New Instrument – if that eligible institutional investor includes similar disclosure in its early warning filings under NI 62-103.

APPENDIX B

List of Commenters

Company or Organization	Name of Commenter/Commenters
Aird & Berlis LLP	Jennifer A. Wainwright
Astral Media	Brigitte K. Catellier
Blakes	John M. Tuzyk
Bombardier	Alain Doré
Borden Ladner Gervais	Alfred Page and David Surat
Canadian Bankers Association	Nathalie Clark
Compton, Ryan A., Daniel Sandler, Lindsay Tedds	Ryan A. Compton, Daniel Sandler, Lindsay Tedds
C.R. Jonsson Personal Law Corporation	Carl Jonsson
Enbridge	Alison Love and Gillian Findlay
Ensign Energy Services Inc.	Glenn Dagenais
F.T.Q	Mario Tremblay, Jasmine Hinse
ICSA	H. Bruce Murray, David Petrie, Patty Orr
INK	Ted Dixon
Kenmar Associates	Ken Kivenko
MÉDAC	Claude Béland
Nexen	Rick C. Beingessner
Ogilvy Renault LLP	Christine Dubé
Ontario Bar Association	Jamie K. Trimble, Christopher Garrah
Ontario Teachers' Pension Plan	Jeff Davis
Osler, Hoskin and Harcourt LLP	Desmond Lee
Scotia Capital & Wealth Management	Cecilia Williams
Stikeman Elliott	Simon A. Romano, Ramandeep Grewal
Sun Life Financial	Dana Easthope
TransCanada	Donald J. DeGrandis
TSX Group Inc.	Richard Nadeau, John McCoach
Veritas Investment Research Corporation	Sam La Bell
Wilfred Laurier University, School of Business and Economics	William J. McNally, Brian F. Smith