APPENDIX C

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

We received 27 comment letters in response to the request for comment. We thank the commenters for their comments.

List of commenters

June 16, 2009	William J. McNally and Brian F. Smith (School of Business and Economics, Wilfrid Laurier University) in PDF
April 13, 2009	Jeff Davis (Ontario Teachers' Pension Plan) in PDF
April 9, 2009	Cecilia Williams (Scotia Capital & Wealth Management) in PDF
March 27, 2009	Sam La Bell (Veritas Investment Research Corporation) in PDF
March 19, 2009	Ted Dixon (INK Research) in PDF
March 19, 2009	Alfred Page and David Surat (Borden Ladner Gervais LLP) in PDF
March 19, 2009	Donald J. DeGrandis (TransCanada) in PDF
March 19, 2009	Nathalie Clark (Canadian Bankers Association) in PDF
March 19, 2009	Alison Love and Gillian Findlay (Enbridge) in PDF
March 19, 2009	Jennifer A. Wainwright (Aird & Berlis LLP) in PDF
March 19, 2009	Christine Dubé (Ogilvy Renault LLP) in PDF
March 19, 2009	Alain Doré (Bombardier) in PDF
March 19, 2009	Desmond Lee (Osler, Hoskin & Harcourt LLP) in PDF
March 19, 2009	Rick C. Beingessner (Nexen Inc.) in PDF
March 19, 2009	Mario Tremblay and Jasmine Hinse (F.T.Q.) (in FRENCH) in PDF
March 18, 2009	Simon A. Romano and Ramandeep K. Grewal in PDF
March 18, 2009	John M. Tuzyk (Blakes) in PDF
March 18, 2009	Dana Easthope (Sun Life Financial) in PDF
March 18, 2009	Claude Béland (MÉDAC) (in FRENCH) in PDF
March 17, 2009	Carl Jonsson (C.R. Jonsson Personal Law Corporation) in PDF
March 17, 2009	H. Bruce Murray, David Petrie and Patty Orr (ICSA) in PDF
March 16, 2009	Jamie K. Trimble and Christopher Garrah (Ontario Bar Association) in PDF
March 13, 2009	Richard Nadeau and John McCoach (TSX Group Inc.) in PDF
March 13, 2009	Brigitte K. Catellier (Astral Media) in PDF
March 10, 2009	Daniel Sandler, Lindsay Tedds and Ryan A. Compton in PDF
January 15, 2009	Glenn Dagenais (Ensign Energy Services Inc.) in PDF
December 23, 2008	Ken Kivenko (Kenmar Associates) in PDF

The comment letters are available at www.osc.gov.on.ca.

In the following summary, we refer to the authors of a comment letter as “the commenter” regardless of the number of authors.

Summary of Comments and Responses

NI 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104 or the Instrument)
and
55-104CP *Insider Reporting Requirements and Exemptions* (55-104CP or the Policy)

Comment #	Themes	Comments	Responses
Part 1 – General			
1	**General – Support for the initiative**	Eighteen commenters expressed general support for the initiative and the objective of modernizing, harmonizing and streamlining insider reporting in Canada. Many of these commenters specifically commented on the benefits of consolidating insider reporting requirements and exemptions in a single instrument and the narrowing of the reporting obligation to a core group of insiders who have routine access to material undisclosed information and significant influence over their issuers. Some commenters think that eliminating unnecessary insider reporting will provide investors with more meaningful insider information, while reducing the regulatory burden and costs for issuers and insiders.	We thank the commenters for their support.
2		One commenter noted that investors, analysts and others use insider reports as part of their decision making and that it was well established that there is a correlation with these trading patterns and company health. The commenter also noted that the timely knowledge of stock option grants (or equivalent compensation) assists investors in assessing the efficacy of corporate governance in relation to executive compensation and in conducting option backdating analysis, making this initiative very important from an investor perspective.	We thank the commenter for its support.
3		One commenter commented that, in general, it believes that Canadian regulators have made significant and impressive progress in developing Canada's insider reporting regime over the past seven years. The commenter was further encouraged that regulators are continuing to focus their attention on ensuring our reporting system remains modern and transparent, particularly in relation to competing capital markets around the world.	We thank the commenter for its support.

Comment #	Themes	Comments	Responses
4	**General – Opposition**	One commenter questioned whether the initiative would achieve any improvement in the deterrence or signalling objectives of insider reporting. (a) With respect to deterrence, the commenter expressed concern over insiders effecting illicit insider trades through family members or by associates or affiliates and suggested that previous CSA initiatives may have exacerbated this. The commenter suggested that the current initiative, by reducing the number of insiders who have to report, would remove the deterrence effect for those insiders no longer required to report. (b) With respect to signalling, the commenter questioned whether the CSA had any significant evidence that investors access insider reports or make decisions based on insider trading information. Unless this is the case, there is no point in requiring insider reports to be filed in 5 days instead of 10 days. The commenter suggested the current 10-day requirement is already very onerous. (c) The commenter also suggested that the proposed acceleration of the filing deadline to 5 days will result in increased numbers of late filings and therefore increased late filing fees collected by the regulators. The commenter suggested that the current late fee system in Ontario ($50 per day to a maximum of $1,000) is enforced rigorously, and that Ontario's enforcement is a revenue-generating scheme.	We acknowledge the comments but disagree with the concerns raised by the commenter. The CSA have not previously amended the definition of "insider" to eliminate family members, associates and affiliates. In the case of family members, the CSA have included guidance in the Policy about the meaning of the term "control or direction" and clarified that a reporting insider in certain circumstances may have or share control or direction over securities held by family members. We think this guidance should help reduce the risk of insiders effecting unreported trades through family members. As explained in the Notice, we think we can improve the effectiveness of the insider reporting system by narrowing the focus to insiders who have both routine access to material undisclosed information and significant influence over the reporting issuer. We think the enhanced deterrent and signalling effect on the core group of insiders with the greatest access to material undisclosed information and the greatest influence outweighs the potential loss of these effects on insiders who are outside this core group. As to whether investors make decisions based on insider trading information, several commenters attest to the benefits for investors from insider reporting. Finally, in view of the significant reduction in the number of reporting insiders under the Instrument and the other improvements to the system, we anticipate that late filing fees will decrease.
5	**General – Carve-out for Ontario in Part 2 of NI 55-104**	Two commenters supported the initiative but expressed concern about the carve-out for Ontario in Part 2 of NI 55-104. One commenter suggested that the policy goals achieved by an insider reporting regime which results in timely, accurate and consistent disclosure of insider trading are substantially prejudiced	We acknowledge these comments. As explained in section 2.1 of the Policy, the insider reporting requirements set out in the Instrument and in Part XXI of the Ontario Act are substantially harmonized.

Comment #	Themes	Comments	Responses
		by the principal insider reporting requirements applicable in Ontario remaining in the *Securities Act* (Ontario). The commenter urged the CSA to communicate this concern to the appropriate governmental bodies. The commenter indicated its strong preference for the insider reporting requirements in all Canadian jurisdictions to be contained in NI 55-104. The commenter also urged the CSA to clarify the numerous comments in NI 55-104 about the similarities between the insider reporting requirements in Ontario and those applicable in the balance of Canada. If it is the view of the CSA that NI 55-104 and the insider reporting requirements in Ontario provide an identical regime, the CSA should make that statement unequivocally. In the alternative, if the CSA is of the view that the regimes are not the same, the CSA should provide clear guidance on the differences. In the absence of definitive guidance, market participants will have to make this determination, and inconsistent reporting will inevitably result, neither of which will foster efficient capital markets in Canada.	CSA staff intend to publish revised staff guidance when the Instrument takes effect that will clarify any material differences.
6	**General – Complexity as a result of statutory definitions overriding definitions in the Instrument**	Two commenters expressed concerns over the additional complexity arising from statutory definitions overriding definitions in the rule. One commenter stated that in order to fully understand the proposed insider reporting regime, a market participant will need to consult one or more of: (i) NI 55-104; (ii) the Act and regulations in Ontario; and (iii) the definition of terms such as "insider", "derivative", "economic exposure", "economic interest", "exchange contract" and "related financial instrument" in Canadian securities legislation of each of the relevant provinces and territories.	As explained in subsection 1.4(1) of the Policy, in the case of terms that are defined by reference to the definition in the local statute rather than the Instrument, the CSA consider the meanings given to these terms to be substantially similar in each of the CSA jurisdictions and to the definitions set out in the Instrument. CSA staff intend to publish revised staff guidance when the Instrument takes effect that will clarify any material differences.
Part 2 – Concept of "reporting insider"			
1	**Concept of "reporting insider" – Support**	Twenty commenters supported the introduction of the reporting insider concept and the proposal to limit the reporting requirement to insiders who satisfy the criteria of routine access to material undisclosed information and significant influence over the reporting issuer.	We thank the commenters for their comments.

Comment #	Themes	Comments	Responses
2		One commenter was delighted to see that the CSA is proposing to significantly reduce the number of persons required to file insider reports. The commenter's preliminary view was that the proposals would result in a 70% reduction in the number of reporting insiders for the commenter. The commenter believed that this would significantly reduce the burden of filing insider reports without negatively impacting the quality of the information available to the market. However, the commenter believed that the proposed definition of reporting insider was still overly inclusive. The commenter recommended that the CSA streamline the definition of reporting insider in the Instrument and add guidance to the Policy to illustrate how the CSA think the knowledge criteria should be interpreted.	As explained below, we have made a number of amendments to further streamline the definition of "reporting insider" and have added guidance to the Policy to illustrate how the CSA think the knowledge criteria should be interpreted.
3		One commenter agreed with the principle of generally limiting reporting requirements to persons who have routine access to material undisclosed information and significant influence over the reporting issuer but suggested it may be appropriate and clearer to amend the statutory definition of "insider" directly rather than adding a new definition of a "reporting insider".	We have not proposed an amendment to the definition of "insider" in securities legislation since the concept of "insider" is a core component of the definition of "person or company in a special relationship with a reporting issuer" in securities legislation. We do not think it is appropriate to remove from the special relationship definition (and the insider trading prohibition) insiders who may have access to material undisclosed information but who do not satisfy the routine access and significant influence criteria reflected in the definition of reporting insider.
4	**Concept of "reporting insider" – reference to clause 3.2(1)(c)** **["person or company responsible for a principal business unit, division or function of the reporting issuer or of a major subsidiary"]**	Three commenters recommended the definition of reporting insider be amended to delete clause 3.2(1)(c). One commenter stated that, given the intent to narrow the focus to a core group of insiders with the greatest access to material undisclosed information and the greatest influence, clause (c) should be removed. The commenter believed the continued inclusion of clause (c) would perpetuate the inclusion of persons with knowledge or influence over a portion of the operations or financial results of the reporting issuer but not the reporting issuer as a whole. One commenter noted that the express reference to a person responsible for a principal business unit, division or function of a	We have amended clause 3.2(1)(c) to delete the reference to "major subsidiary".

Comment #	Themes	Comments	Responses
		major subsidiary of a reporting issuer results in a separate definition that is different from the definitions of "executive officer," "officer" or "senior officer" in securities legislation.	
5	**Concept of "reporting insider" – reference to significant shareholders**	One commenter said including significant shareholders in the definition of reporting insider may, in many cases, be over-inclusive. Depending upon the reporting issuer's shareholder base, a 10% ownership interest may not provide a shareholder with any access to material undisclosed information, or significant influence over, the reporting issuer. The commenter suggested that the CSA consider including only those significant shareholders who satisfy the criteria of access and influence. Alternatively, the CSA could consider expanding the exemption in section 9.3 so that it applies to the significant shareholder itself, as well as its officers and directors.	We have not amended the Instrument in response to this comment. Section 9.3 of the Instrument contains an exemption for a director or officer of a significant shareholder of a reporting issuer if the director or officer does not satisfy the criteria of routine access to material undisclosed information or significant influence over the issuer. We do not think it is appropriate to extend this exemption to the significant shareholder itself. We think that an ownership or control position representing more than 10% of a reporting issuer's voting securities will generally give rise to a level of potential access to and influence over the reporting issuer as to warrant reporting.
6	**Concept of "reporting insider" – reference to significant shareholders and major subsidiaries**	Three commenters agreed that the definition should be limited to persons who satisfied the access and influence criteria but suggested the definition was too broadly drafted and would catch persons (namely executives and directors of major subsidiaries and significant shareholders) who do not otherwise meet the access criteria. Similarly, one commenter suggested that the CSA should consider removing the concept of major subsidiaries and significant shareholders from the definition except in clause (d) of the definition since a significant shareholder itself should be an insider. The commenter suggested this is feasible since the basket provision in clause (i) captures anyone with routine access and significant influence. Similarly, one commenter suggested that the concept of reporting insider should be limited by removing the concept of "major subsidiary" from paragraphs (a), (b), (c), (e) and (i) of the definition. This would result in the reporting requirement more closely	We have amended clause 3.2(1)(c) and the basket provision in clause 3.2(1)(i) to delete the reference to "major subsidiary". We have also added related guidance to the Policy. We think it is appropriate to retain insider reporting by the CEO, CFO, and COO and directors at the significant shareholder or major subsidiary level and persons and companies responsible for a principal business unit, division or function of the reporting issuer as we think that these individuals will generally satisfy the policy reasons for insider reporting described in section 1.3 of 55-104CP. For example, where a subsidiary represents a significant proportion of the assets or revenues of a reporting issuer parent on a consolidated basis, information about the subsidiary may be material to the reporting issuer. This is most clearly the case with many income trusts and similar indirect offering structures, since the reporting issuer parent may have few officers and directors and all or substantially all of the issuer's assets and revenues are held at the major subsidiary level.

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		resembling the U.S. model where reporting is effectively limited to directors, executive officers and major shareholders and in general does not reach down to the directors and officers of subsidiary companies. The commenter suggested that if the concept of "major subsidiary" is removed from the definition of reporting insider, the two criteria in "basket" provision (i) would similarly prevent avoidance of the reporting requirement by other insiders who should be reporting.	Other officers at the significant share-holder or major subsidiary level will only be required to file insider reports if they satisfy the basket criteria in clause 3.2(1)(i).
7		Two commenters suggested that including directors of major subsidiaries, as well as persons or companies responsible for principal business units, divisions or functions of a major subsidiary, in the enumerated list of the proposed definition of reporting insiders without providing for an exemption based on lack of access to material undisclosed information could potentially increase the number of reporting insiders. The commenter suggested that directors of major subsidiaries and persons or companies responsible for principal business units of major subsidiaries should be excluded from the enumerated list and be captured by the basket provision in clause 3.2(1)(i).	We have amended clause 3.2(1)(c) and the basket provision in clause 3.2(1)(i) to delete the reference to "major subsidiary". Including directors of major subsidiaries in the enumerated list of the proposed definition of reporting insider will not increase the number of reporting insiders, when compared to the present exemptions regime contained in NI 55-101 *Insider Reporting Exemptions*, since such persons are currently "ineligible insiders" and therefore ineligible for the exemption in Part 2 of NI 55-101. In view of the increase of the assets and revenue thresholds in the definition of major subsidiary from 20% to 30%, the number of insiders who are reporting insiders because they are directors of major subsidiaries should decrease.
8	**Concept of "reporting insider" – inclusion of insiders at "major subsidiary" level – increase of assets and revenue thresholds from 20% to 30%**	All eight commenters who commented on the threshold question supported the amendment to the definition of "major subsidiary" (as it presently exists in NI 55-101) that would increase the assets and revenue thresholds from 20% to 30%.	We thank the commenters for their comments.
9	**Concept of "reporting insider" – inclusion of insiders at "major subsidiary" level – proposed exemption for**	One commenter recommended that the definition of "major subsidiary" be modified to exclude intermediate holding companies (in contrast to operating companies). Holding companies that carry on no business (other than holding	We will consider applications for an exemption from the reporting requirement for insiders in these circumstances.

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	major subsidiaries that are passive holding companies	assets) and have no operations and as such, generally would have no business or functions for which to assign responsibility to insiders. As such, directors and officers of holding companies generally have no control over any business units, divisions or functions of the reporting issuer or access to material information regarding the reporting issuer by virtue of their positions with the holding company. In general, the commenter thought that individuals in this situation do not meet the thresholds of relevance or materiality underlying the policy rationale of insider reporting regulations by virtue of their positions with a holding company if the associated operating company does not itself meet the definition of 'major subsidiary', and that investors would receive no material or meaningful information from disclosure made by insiders of holding companies.	
10	**Concept of "reporting insider" – clauses 3.2(1)(d) and (h)**	One commenter noted that subsection 3.2(1)(d) and (h) are duplicative for a significant shareholder based on post-conversion beneficial ownership, given the interpretation provision set out in subsection 3.2(2) that states "reference to a significant shareholder includes a significant shareholder based on post-conversion beneficial ownership."	We have amended the definition of "reporting insider" to address this comment. We have amended subsection 3.2(2) to clarify that, if a significant shareholder based on post-conversion beneficial ownership is a reporting insider, every director, CEO, CFO, and COO of the shareholder will also be reporting insiders. Please see Part 7 of the Summary for further information on this change.
11	**Concept of "reporting insider" – reporting issuer as insider of itself – clause 3.2(1)(g)**	Two commenters questioned the usefulness of including the issuer as a class of reporting insider. One commenter suggested that including a reporting issuer while it holds its own securities as a reporting insider, as subsection 3.2(1)(g) does, has always been a troublesome concept. Canadian corporate statutes generally require cancellation of repurchased shares, and result in the termination of other obligations, when an issuer acquires its own securities. Thus, an issuer acquiring its own securities should not have to report as a reporting insider. The commenter also suggested further consideration of whether the	We have not amended the Instrument in response to this comment. The Instrument has not changed the existing reporting requirement for issuers but does include a new exemption for issuer transactions where there is other public disclosure. We have not eliminated the existing reporting requirement for issuers because we think participants would find the monthly reporting of acquisitions under a normal course issuer bid (NCIB) useful. The comment letter filed by McNally and Smith cites extensive research that suggests that issuer reporting of issuer purchases may provide valuable

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		reporting requirements set out in section 3.3(b) and Part 4 would be appropriate for the issuer itself where it holds its own securities.	information to investors. Although corporate statutes generally require cancellation of purchased shares, these provisions may not apply to non-corporate issuers. In addition, as explained in Part 7 of the Policy, corporations and non-corporate issuers may also acquire their shares through affiliates.
12		One commenter suggested removing the language "for so long as it continues to hold that security" in subsection 3.2(1)(g) and in the Policy. This language could lead to ambiguity among issuers as to whether or not they need not file an insider report on SEDI if shares are immediately bought and cancelled during an NCIB. Alternatively, clear language should be added to 3.2(1)(g) to include the fact that all NCIB transactions are subject to insider reporting. The commenter opposed any initiative to move NCIB reporting onto SEDAR.	We have not amended clause 3.2(1)(g) of the definition since this language is based on the corresponding language in the definition of "insider" in Canadian securities legislation.
13		One commenter cited research that shows that executives are able to use their insider knowledge to cause the issuer to repurchase shares when they are undervalued. In so doing, they transfer wealth from selling to non-selling shareholders, including themselves. The commenter also submitted that research shows that repurchases convey valuable information to the market so release of information about repurchases should be made in a timely manner. A uniform system of timely disclosure of NCIBs through a single source like SEDI would promote greater market efficiency.	Please see response in 11.
14	**Concept of "reporting insider" – reference to significant power or influence in clause 3.2(1)(i)**	One commenter was concerned that implementing a dual criteria system may inadvertently limit the number of insiders, leaving out individuals who should remain classified as insiders. The commenter was supportive of the first criterion, routine access to material undisclosed information, but was concerned the second criterion, namely, "significant power or influence over the business, operations, capital or development of the reporting issuer" was ambiguous and open to broad interpretation. Another commenter suggested that the CSA qualify the meaning of	We have not amended the Instrument in response to this comment. We have added guidance to the Policy to clarify the interpretation of "significant influence".

Comment #	Themes	Comments	Responses
		"significant power or influence". The commenter was concerned that, without qualification, reporting issuers will tend to err on the side of caution, diluting the intent to focus on a primary group of reporting insiders.	
15	**Concept of "reporting insider" – inclusion of principles-based basket provision (s. 3.2(1)(i))**	One commenter recommended that the "basket" provision in subsection 3.2(1)(i) be removed from the definition of reporting insider. The commenter thinks that subsections 3.2(1)(c) and (f) will capture all the individuals that subsection 3.2(1)(i) intends to, as it is only individuals performing the roles, or having the responsibilities, set out in 3.2(1)(a) to (f) that would have access to information as to material facts or changes concerning the reporting issuer and exercise significant influence over the reporting issuer or its principal business units, divisions or functions (or those of a major subsidiary). The inclusion of the subsection could lead to inaccurate or over-reporting by issuers, in turn undermining the CSA's attempt in the Instrument to make insider reporting data more meaningful for investors. In the alternative, if the CSA feels that the provision does add value, the commenter recommended that it be moved to the Policy so that insiders and issuers may use it as guidance.	We have not amended the Instrument in response to this comment. However, as noted above, we have added guidance to the Policy to address the concern that the concept of "significant influence" may be vague. The drafting of the definition of reporting insider represents a principles-based approach to determining which insiders should file insider reports. The basket provision articulates the fundamental principle that any insider who satisfies the criteria of routine access to material undisclosed information concerning a reporting issuer and significant influence over the reporting issuer should file insider reports. All commenters who commented on this question agreed that these were the appropriate principles for determining which insiders should be required to file insider reports. The definition enumerates positions that, in our view, will generally satisfy these criteria. In the case of an insider that does not fall within the enumerated categories, the issuer and insider should consider whether the insider exercises a degree of influence over the reporting issuer that is commensurate with that of the enumerated positions and, if so, if the individual comes within the 'basket provision'.
16	**Concept of "reporting insider" – subsection 3.2(2) – reference to "significant share-holder" to include "significant shareholder based on post-conversion beneficial ownership"**	One commenter questioned whether a significant shareholder based on post-conversion beneficial ownership should be included as a reporting insider. The commenter noted that the reporting requirement in section 3.3 would likely never apply to a "reporting insider" who is a reporting insider only on account of being a "significant shareholder based on post-conversion beneficial ownership" because such reporting insider would not have either (i) direct or indirect, beneficial	We have amended the nil report exemption in section 9.4 in response to this comment. If a person or company is a reporting insider solely on account of being a "significant shareholder based on post conversion beneficial ownership", the reporting insider will still have a reportable interest. The convertible securities that give rise to reporting insider status will generally be "related financial instruments" or will be subject to the Part 4 requirements.

Comment #	Themes	Comments	Responses
		ownership or control, or control or direction or (ii) an interest, right or obligation associated with a related financial instrument. The same comment also applies to subsection 3.4.	See also the response below to comments relating to the concept of post-conversion beneficial ownership.
17	**Concept of "reporting insider" – proposal to include family members**	One commenter noted that, although the Québec *Securities Act* ("QSA") prohibits related persons from using privileged information, they are not subject to the insider reporting requirement. The commenter believed that such persons should be subject to a reporting requirement so that investors have a complete portrait of the insider situation, thereby avoiding any attempt to use these channels.	We have not amended the Instrument in response to this comment. However, we have expanded the guidance in Part 3 of the Policy to address the situation of "related persons". As explained in Part 3 of the Policy, reporting insiders must file insider reports in respect of transactions in securities over which the insider has or shares "control or direction". It will generally be a question of fact whether a reporting insider has or shares control or direction over securities held by the "related persons" referred to in the comment. However, we think that the relationships reflected in the list of related persons will generally give rise to a presumption that the insider has or shares control or direction over the securities held by the related person. The reporting insider may also have or share beneficial ownership over these securities.
18	**Concept of "reporting insider" – opposition – will increase the number of insiders required to report**	One commenter suggested that limiting the reporting requirement to reporting insiders (according to the current definition) would not reduce the number of insiders required to file reports for development capital funds.	We disagree with this comment.
Part 3 – Proposal to accelerate reporting deadline from 10 calendar days to 5 calendar days			
1	**Proposal to accelerate reporting deadline from 10 calendar days to 5 calendar days – Support**	Eight commenters supported the acceleration of the reporting deadline from 10 calendar days to five calendar days for subsequent insider reports. Some commenters said that the reporting deadline should be two days. One commenter supported the change but urged the CSA to consider accelerating the filing window to, at a minimum, the two-	We thank the commenters for their comments. We have not amended the proposed filing deadline of five calendar days for subsequent insider reports.

Comment #	Themes	Comments	Responses
		business-day window that exists in the U.S. The commenter suggested that Canada is not immune to the backdating scandal that has unfolded in the United States in recent years. The commenter has recently published research in the Canadian Business Law Journal that demonstrates that the incidence of backdating in Canada is much broader than the few Canadian companies that have publicly announced inappropriate backdating behaviour. The commenter noted that, as a result of the Sarbanes-Oxley Act, the SEC reporting regulations now require executive stock option grants to be reported to the SEC within two business days of the grant. Recent U.S. research shows that, with the introduction of a two-day reporting period, the return pattern associated with backdating is much weaker and the percent of unscheduled grants backdated or manipulated fell dramatically. The move to a two-day rule provides a much smaller window to opportunistically backdate option grants and still meet the reporting requirements.	
2		One commenter noted that the proposed reduction in the reporting window from ten days to five days should reduce the ability to manipulate stock option grants in Canada, although not to the same extent as the U.S. two-day window. The commenter urged the CSA to consider accelerating the filing window to, at a minimum, match that which exists in the U.S.	We have not made any changes in response to this comment. We think that given the significant media attention and recent enforcement actions in the U.S. and Canada issuers and insiders are aware of their obligations and will act in compliance with these obligations. Issuers and insiders that do not comply could face enforcement action.
3		One commenter supported the proposal to require timely disclosure of grants of stock options and similar instruments through the insider reporting system or through the issuer filing an issuer grant report. The commenter cited U.S. research that illustrated that share prices dropped systematically before the registered date of options grants, and rose systematically after the date of the grant, something that could not have happened by chance. The pattern was most pronounced prior to 2002 when U.S. companies had until the end of the fiscal year to file their options grants, giving them ample opportunity to retroactively pick favourable grant prices.	We agree timely disclosure of grants of securities and similar instruments, whether through the insider reporting system or through the issuer filing an issuer grant report, allows investors to monitor whether insiders may be causing issuers to engage in improper or unauthorized dating practices including backdating, spring-loading and bullet-dodging. Under NI 55-104, reporting insiders will generally be required to file insiders reports about grants of options and similar instruments within five days of the grant. This is generally consistent with insider reporting (section 16) requirements in the U.S., which require insiders to report grants of options,

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		The research also found that the statistical "V" that characterized prices around the grant date all but disappeared after the 2002 introduction of the Sarbanes-Oxley requirement to file insider reports about these grants within two days. The commenter cited its own 2006 study of Canadian S&P/TSX 60 options grants showed the same "V" shaped pattern, signalling that Canada did in fact have an options problem. The commenter viewed the reduction to a five-day filing window for existing filers as a major improvement but was concerned that it did not eliminate the opportunity to backdate options created by late filings. Whatever the required filing window for transactions, the *de facto* filing window stretches to the point when the report is actually filed.	phantom share units and similar equity derivatives within two business days.
4	**Proposal to accelerate reporting deadline from 10 calendar days to five calendar days – Opposition**	Eight commenters suggested the period to file insider reports should not be shorter than five business days. This would balance the need for timely information with the administrative burden of filing insider reports. Three commenters opposed shortening the reporting deadlines from 10 days to five calendar days because they thought that a shortened time period would be difficult to comply with for some insiders. One commenter was supportive of the proposal to accelerate the reporting deadline but urged the CSA to consider SEDI improvements prior to implementing the accelerated reporting deadline. The commenter noted its members have found that SEDI is unduly complicated and difficult to use which has resulted in mistakes being made and late filing fees being imposed when those mistakes are rectified. As such, the commenter was concerned that those difficulties will impede the ability of insiders to report transactions within the shorter time frame proposed by the CSA. In addition, the commenter suggested that an option of five calendar days *or three business days*, whichever is later, be provided so that reporting insiders have sufficient time to file reports where a five calendar day period includes weekends and statutory holidays.	We have not amended the proposed filing deadline of five calendar days for subsequent insider reports. However, we have amended the Instrument to include a transition provision that will delay the introduction of the accelerated filing deadline until six months after the effective date. Accordingly, issuers and insiders will have an additional six months to become familiar with the new reporting requirements in the Instrument and to make necessary arrangements with third-party service providers. We acknowledge the comments relating to the user friendliness of SEDI from the perspective of people required to file insider reports. As explained in the Notice and Request for Comment, we anticipate that several of the proposed substantive changes to our insider reporting regime will help address concerns raised by issuers and insiders in relation to SEDI. We are continuing to review measures to improve the user friendliness of SEDI.

Comment #	Themes	Comments	Responses
		One commenter believed that it was premature to accelerate the filing deadline until the System for Electronic Disclosure by Insiders (SEDI) is made more user friendly for people required to file insider reports. In addition, the commenter noted that an insider may need to seek support from the SEDI help desk or local commission staff before completing a filing. While SEDI is available seven days a week, neither the SEDI help desk nor local securities commissions are available to provide support seven days a week. Consequently, the commenter strongly recommended that the support functions are enhanced and perhaps centralized before accelerated filings are introduced.	
5	**Proposal to retain 10 day reporting deadline for initial reports**	All commenters who commented on the issue supported the retention of the current 10-day timeline for filing initial reports to accommodate new filers.	We thank the commenters for their support.
Part 4 – Proposal to ensure consistent treatment of stock options and similar equity derivatives			
1	**Proposal to ensure consistent treatment of stock options and similar equity derivatives – Support**	Seven commenters supported the proposal to ensure that cash-settled equity derivatives that have a similar economic effect to stock options are reported in a similar manner to stock options. Several commenters also made related comments in connection with the issuer grant report proposal.	We thank the commenters for their support. As explained below, we have not made any changes to the proposal to require cash-settled equity derivatives that have a similar economic effect to stock options to be reported in a similar manner to stock options.
2		One commenter supported the proposal to require timely disclosure of grants of stock options and similar instruments through the insider reporting system. The commenter cited its own 2006 study of Canadian S&P/TSX 60 options grants that showed that option backdating was very likely occurring in Canada. The commenter noted that if backdating is the problem, then investors and regulators should also be concerned with the proliferation of other forms of compensation linked to share prices, since these are equally prone to abuse. Otherwise, compensation will simply gravitate to forms featuring less oversight and disclosure. The commenter noted that many companies are converting their	We agree that timely disclosure of grants of stock options and similar instruments is important since it allows investors, among other things, to monitor whether issuers and insiders may be engaging in improper or unauthorized dating practices Under NI 55-104, reporting insiders will generally be required to file insiders reports about grants of options and similar instruments within five days of the grant. This is generally consistent with insider reporting (section 16) requirements in the U.S. that require insiders to report grants of options, phantom share units and similar equity derivatives within two business days. Part 6 of NI 55-104 contains an exemption from the insider

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		conventional options, which grant the right to buy shares at a specified price, into plans that provide a cash alternative, such as: 1. Stock Appreciation Right or SARs 2. Tandem Options 3. Deferred Share Units or DSUs or 4. Performance Share Units or PSUs. The commenter noted that some companies argue that these forms of compensation are "just like cash bonuses", and therefore should not be tracked by insider filings but instead by conventional rules for disclosing compensation. Because of their link to equity prices, these instruments are just as prone to abuse as conventional options. The commenter noted that SARs and Tandem Options can be backdated in exactly the same way as conventional options by looking backwards and setting a price lower than the current share price. The commenter also provided examples of how PSUs and DSUs are subject to gaming.	reporting requirement for a grant of options or similar instruments under a compensation arrangement, provided the issuer has disclosed the existence and material terms of the arrangement in a public filing and filed an issuer grant report in accordance with s. 6.3. We encourage issuers to assist their insiders in complying with their insider reporting requirements by, for example, making use of the new exemption in Part 6 of NI 55-104 for issuer grant reports.
3	**Proposal to ensure consistent treatment of stock options and similar equity derivatives – Opposition**	Several commenters did not support the proposal to ensure that instruments that have a similar economic effect to stock options are reported in a similar manner to stock options. *Proposed exemption for all compensation instruments* One commenter recommended that the CSA introduce a new exemption that would exempt from the insider reporting requirements all grants of securities and equity derivatives under compensation arrangements, including stock options, restricted share units (RSUs), deferred share units (DSUs), whether settled in cash, securities acquired in the market, or shares issued from treasury. The commenter suggested that these do not provide any meaningful information relating to discrete investment decisions. These arrangements are disclosed (for certain insiders) as executive and director compensation in management proxy circulars for directors and the five key named executive officers. *Proposed exemption for PSUs and RSUs* One commenter recommended excluding from the insider reporting	We have not amended the Instrument in response to these comments. Part 6 of NI 55-104 contains an exemption from the insider reporting requirement for a grant of options or similar instruments under a compensation arrangement, provided the issuer has disclosed the existence and material terms of the grant in a public filing and filed an issuer grant report in accordance with s. 6.3. We do not think it is appropriate to create a separate exemption for a grant of options or similar instruments which would eliminate timely disclosure about the grant. Similarly, we do not think it is appropriate to create a separate exemption for grants of certain types of instruments – based solely on the legal form of the instrument – which would eliminate timely disclosure about the grant. *Policy rationale for insider reporting* Timely disclosure of a grant or exercise of options or similar

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		requirements compensation instruments such as performance share units (PSUs) and restricted share units (RSUs). The commenter noted that its insiders currently report stock options and deferred share units (DSUs) and was not suggesting any changes for these instruments. In the commenter's view, options and DSUs are fundamentally different from PSUs and RSUs because insiders are making an investment decision when they exercise options or elect to take a portion of their annual incentive compensation in the form of DSUs rather than cash. However, the commenter stated that at no time does an insider make an investment decision with respect to PSUs or RSUs. Each grant of PSUs and RSUs is a compensation decision made by the person to whom the insider reports or the board of directors. These types of compensation arrangements must be disclosed pursuant to Form 51-102F6 and therefore disclosure through SEDI seems unnecessary. *Proposed exemption for cash-settled related financial instruments* Two commenters proposed that the CSA include an exemption for awards of units to insiders under compensation arrangements in respect of which • the material terms are publicly disclosed; • the alteration to the insider's economic interest occurs as a result of a pre-established condition or criterion; and • the alteration does not involve a "discrete investment decision" by the insider. One commenter noted the proposed exemption would not cover grants of stock options or other compensation arrangements that provide for or permit a conversion of a unit into securities. The commenter noted that the plans under which such units are awarded are disclosed (for certain insiders) in other public filings, such as management information circulars. The commenter questioned the need for disclosure through SEDI and suggested that the disclosure of the number of units awarded to a particular individual would not signal anything to the market or provide meaningful information to investors. One commenter noted that there is currently an exemption in MI 55-	instruments serves all of the policy reasons for insider reporting described in section 1.3 of 55-104CP. The policy reasons apply equally to grants and exercises of stock options, instruments that provide for or permit settlement in securities (physically settled instruments) and instruments that provide for or permit a payout in cash (cash-settled instruments). First, timely disclosure of a grant performs a deterrence function since insiders may be able to profit from material undisclosed information, by, for example, timing the grant prior to the announcement of favourable information. Similarly, insider reporting of cash-settled instruments performs the same deterrence function as insider reporting of options and physically settled instruments since cash-settled instruments provide the same opportunities for insiders to profit from material undisclosed information as those instruments. Secondly, the timing of a grant (or repricing of a grant) may be highly relevant information to investors since some investors rely on information about grants in making their own investment decisions. Information about the timing or repricing of a grant may be particularly relevant if insiders participate in the decision to make the grant, since the decision may be based on material undisclosed information or reflect the insiders' views about the issuer's prospects generally. See section 5.1 of Companion Policy 55-101CP and section 5.1 of Policy 55-104CP. Thirdly, insider reporting of grants or repricings of options and similar instruments allows investors to monitor whether insiders may be causing issuers to engage in improper or unauthorized dating practices including backdating, spring-loading and bullet-dodging. *U.S. insider reporting requirements* Under NI 55-104, reporting insiders will generally be required to file insiders reports about grants of options and similar

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		103 *Insider Reporting for Certain Derivative Transactions (Equity Monetization)* ("MI 55-103") from the requirement to report a compensation arrangement on an insider report if the compensation arrangement is publicly disclosed. This exemption has not been continued in the Instrument. While the commenter understood the CSA's desire to create a class of reportable transactions that does not distinguish between physical and cash-settled plans, the commenter suggested that providing an exemption for certain cash-settled compensation plans would be appropriate where the award does not involve • an investment decision by the reporting insider or • an ability to influence the granting of the award by the reporting insider. *Proposed carve out from definition of "related financial instrument" for cash-settled related financial instruments* Four commenters suggested that compensation arrangements that entitle insiders solely to cash payments based on the value or growth in value of shares, such as restricted share units (RSUs) and deferred share units (DSUs), should be carved out of the definition of "related financial instrument" and excluded from the insider reporting requirements as such compensation arrangements are in fact tax-deferred bonuses and are fully disclosed in annual filings such as management information circulars. One commenter suggested that, if the purposes of insider reporting are to deter improper insider trading based on material undisclosed information and providing investors with the insiders' views of an issuer's prospects, these purposes are not achieved by requiring reporting of cash-settled compensation arrangements. These types of arrangements are generally not transferable, and therefore there is no insider trading concern. Further, the disclosure of payouts under such arrangements do not provide investors with the insiders' views of an issuer's prospects. The commenter suggested disclosure of these types of arrangements through insider reporting would be a significant burden, and would not provide meaningful information to the market.	instruments within five days of the grant. If an issuer files an issuer grant report within five days of the grant, the insider may report the grant on an annual basis. The five-day reporting requirement is generally consistent with insider reporting requirements in the U.S. which require insiders to report grants of options, phantom share units and similar instruments within two business days. *Executive compensation disclosure requirements* The fact that grants to some insiders may also be subject to executive compensation disclosure requirements in an annual filing such as an information circular does not obviate the need for timely disclosure of such grants to investors. The insider reporting requirements and executive compensation disclosure requirements serve different purposes. Insider reporting is a form of timely disclosure, and serves the policy reasons described above. Conversely, disclosure about a grant of options or similar instruments through an information circular may not occur until more than a year after the grant. In addition, the executive compensation disclosure requirements are generally limited to the CEO, CFO and top three Named Executive Officers. Accordingly, these disclosure requirements may not cover many insiders who routinely have access to material undisclosed information and exercise significant influence over the reporting issuer. Moreover, executive compensation disclosure requirements do not require disclosure of the grant date. Accordingly, the information reported by issuers may not be sufficient to determine whether the issuer may have engaged in improper or unauthorized dating practices, such as backdating, spring-loading or bullet dodging. Several commenters cite U.S. research that indicates that abnormal return patterns to insiders associated with option grants were substantially reduced in the U.S. following the acceleration of U.S. insider reporting requirements to two

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			business days. Accordingly, we remain of the view that the insider reporting regime is the most effective regime for investors to monitor whether issuers and insiders may be engaging in improper or unauthorized dating practices including backdating, spring-loading and bullet-dodging. *Avoidance concerns* As noted by several commenters, an insider reporting system that requires insiders to file insider reports about grants of securities and instruments that are physically settled but that exempts instruments that are cash-settled would be inconsistent and would not provide an accurate picture of an insider's true economic exposure to the insider's issuer. In addition, such an exemption may invite structuring transactions to avoid disclosure, such as substituting a cash-settled plan for a physically settled plan. At least one study has previously criticized the lack of timely disclosure about grants of cash-settled equity derivatives through SEDI as a "significant loophole".
4	**Proposed exemption for "specified dispositions" under compensation arrangements**	One commenter suggested that Part 6 of the Proposed Rules include a similar exemption to that contained in Part 5 for "specified dispositions".	We have amended the Instrument in response to this comment.
5	**Other proposed exemptions based on existing U.S. exemptions**	One commenter noted that US securities laws include exemptions from the definition of "derivative securities" (for insider reporting purposes) in a number of situations.	In many cases, comparable exemptions already exist in the Instrument. In other cases, we will consider applications for exemptive relief where the applicant can demonstrate the policy reasons for insider reporting do not apply.
6	**Other proposed exemptions based on existing exemptions in MI 55-103/BCI 55-506**	One commenter made reference to the exemptions in subsections 2.2(a), (e), (f), (g), (h), (i) and (j) of MI 55-103, and corresponding exemptions in BCI 55-506, and suggested these exemptions should be included in the Instrument. Two other commenters said the CSA had omitted the exemption	Section 9.7 of the draft version of the Instrument published for comment already included all of these exemptions, except for subsection 2.2(a). We have amended section 9.7 to include an exemption analogous to the exemption that currently exists in subsection 2.2(a) of MI 55-103 and subsection 3(a) of BCI 55-506.

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		that currently exists in s. 2.2(a) of MI 55-103 and subsection 3(a) of BCI 55-506. Finally, one commenter suggested that SEDI is currently not able to accommodate the type of disclosure that the proposed disclosure of economic interests requires of insiders.	We are not aware of any situations where SEDI is not able to accommodate the proposed disclosure of economic interests required of insiders. We note that, prior to the adoption of MI 55-103 in 2004, several commenters raised a similar comment. Accordingly, we published CSA Staff Notice 55-312 *Insider Reporting Guidelines for Certain Derivative Transactions (Equity Monetization)* to provide examples of how such arrangements could be reported.
Part 5 – Concept of "issuer grant report"			
1	**Concept of "issuer grant report" – Overview**	Ten commenters supported the concept of the issuer grant report, subject to their comments relating to the question of whether the report should be filed on SEDAR, SEDI and the appropriate deadline for filing the report. Several commenters agreed this would encourage issuers to assist their insiders in the reporting of option grants and should reduce late insider filings. Three commenters did not support the proposal for an issuer grant report, primarily due to concerns that filing the report on SEDAR would result in fragmented insider disclosure and may result in delayed public disclosure of option grants. Four commenters did not oppose the issuer grant report but believed it would be of limited benefit. One commenter suggested that the exemption from insider reporting under the issuer grant report provisions would be of minimal benefit to significant shareholders (since the securities must continue to be disclosed under the early warning reporting regime) and may lead to inconsistent disclosure in the market.	We thank the commenters for their support. As a result of the comments received, we have amended the proposal to permit an issuer to file the issuer grant report on SEDI rather than SEDAR. The instrument would now enable, the issuer grant report to be filed in a similar manner to an "issuer event report". Accordingly, if an issuer files an "issuer grant report" on SEDI within five days of a grant, each insider recipient of the grant will be exempt from the requirement to file an insider report within five days of the grant and may instead file an alternative report on an annual basis.
2	**Concept of "issuer grant report" –SEDI v. SEDAR**	Two commenters agreed with the CSA's proposal that the issuer grant report be filed on SEDAR first, pending necessary changes being made to SEDI. One commenter suggested there should be a separate category created on SEDAR for purposes of filing issuer	We thank the commenters for their support. As a result of the comments received, we have decided to amend the proposal to permit an issuer to file the issuer grant

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		grant reports and other insider related reports. Thirteen commenters suggested the issuer grant report should be filed on SEDI rather than SEDAR.	report on SEDI rather than SEDAR. The instrument would now enable the issuer grant report to be filed in a similar manner to an "issuer event report". Accordingly, if an issuer files an "issuer grant report" on SEDI within five days of a grant, each insider recipient of the grant will be exempt from the requirement to file an insider report within five days of the grant and may instead file an alternative report on an annual basis.
3	**Concept of "issuer grant report" – Concern over lack of timely disclosure of option grants**	One commenter was concerned that annual reporting of grants was not sufficiently timely, particularly given the disparity that will result on SEDI profiles for such reporting insiders. The commenter supported necessary changes being made to SEDI to enable filing of the issuer grant report, to make it simpler for investors to gain a complete understanding of insider positions and to make it easier for filers to keep profiles up to date. One commenter indicated it did not intend to use an issuer grant report. Use of such a report increases the administrative burden and the delayed filing of grants issued to reporting insiders reduces the meaning and impact of the reports currently captured on SEDI. The commenter objected to the annual filing of option grants, as SEDI would no longer reflect a complete record of holdings. The filing of annual accumulations under automatic securities plans is generally immaterial, whereas stock option grants, for example, can be material.	The deadline for an issuer to file an issuer grant report is effectively within five days of the grant. This is because, in order for a reporting insider to be able to rely on the exemption in Part 6, the insider must first confirm that issuer has previously filed an issuer grant report. Accordingly, if an issuer chooses to file an issuer grant report with a view to assisting its insiders with their reporting obligations, there will continue to be timely public disclosure of the grant.
4	**Concept of "issuer grant report" – Timing – Ambiguity**	Three commenters suggested it was unclear whether the issuer grant reports needed to be filed within five days of the grant or within 90 days of the end of the calendar year.	The deadline for an issuer to file an issuer grant report is effectively within five days of the grant. This is because, in order for a reporting insider to be able to rely on the exemption in Part 6, the insider must first confirm that issuer has previously filed an issuer grant report.
5	**Concept of "issuer grant report" – Timing – Date of grant**	One commenter suggested that the onus for filing reports about stock option grants should rest on the corporation and not on the insider, and this obligation should arise on the day the options are granted.	We have not amended the Instrument in response to this comment. Currently, timely disclosure of grants (or repricings) of options and similar instruments is achieved through the insider

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		Reporting issuers should not have the option of filing such reports, as is proposed in NI 55-104. Reporting by the corporation should be mandatory. Second, companies granting executive stock options should be required to issue a public press release on the *day of* an option grant (and any amendments to existing options). The commenter noted this is the practice currently in place for companies listed on the TSX Venture Exchange. Through this requirement, the ability to backdate should be eliminated completely and at a relatively low cost in terms of regulatory resources.	reporting system. There does not currently exist a timely disclosure obligation on issuers to report grants of options or similar instruments, other than through certain exchange requirements, unless such a grant is considered a material change. So long as the reporting obligation rests with the insider recipient, it is necessary to balance the interest in investors in timely disclosure about grants or repricings with the interest in not imposing an undue burden on insiders in being able to comply with their obligations.
6	**Concept of "issuer grant report" – Timing – Proposal for annual filing only**	One commenter requested the CSA consider revising the exemption so that issuers could report option grants to insiders for the year within 90 days of the year end, instead of five days after each grant. The commenter believed that the annual reporting of option grants to insiders would be sufficiently timely as option grants are not exercisable and do not vest, generally, until at least one year after issuance. Options grants comprise a part of an individual's compensation and do not, upon award, reflect an investment decision made by the option grant recipient and do not indicate receipt of or access to insider information regarding an issuer's securities by an option grant recipient. Reporting issuers will have also made extensive disclosure regarding options grants and programs in particular and compensation in general in compliance with continuous disclosure obligations. Finally, the commenter believed the CSA should not limit the ability to file an issuer grant report to stock options. The commenter suggested that this proposal should be extended to any reportable interest that is granted from an issuer to an insider. This would harmonize the reporting requirements for different types of securities which is one of the stated aims of the Proposed Instrument.	We have not amended the Instrument in response to this comment. As explained in Part 4 above, timely disclosure of a grant of options or similar instruments serves all of the policy reasons for insider reporting described in section 1.3 of 55-104CP. The fact that grants to some insiders may also be subject to executive compensation disclosure requirements in an annual filing such as information circular does not obviate the need for timely disclosure of such grants to investors. Disclosure about a grant of securities or RFIs through an information circular may not occur until more than a year after the grant.
7	**Concept of "issuer grant report" – Timing –**	Seven commenters supported retaining the current 90-day filing deadline for filing annual insider reports.	We have amended the annual filing deadline for the alternative report contemplated by Parts 5 and 6 of the Instrument to refer

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	Filing deadline for alternative report	One commenter recommended the CSA set a precise deadline of March 31. The commenter also recommended this March 31 deadline be extended to apply to all automatic securities purchase plans.	to a precise deadline of March 31.
8	**Concept of "issuer grant report" – Proposal for aggregated disclosure**	One commenter recommended that disclosure required in an issuer grant report be amended to require disclosure on an aggregate basis only, and not with respect to each director or officer. In the case of officers, this could potentially include a very long list of people, including people who are not otherwise subject to executive compensation disclosure requirements. The reference to "acquisition of securities" in section 6.2 and section 6.4 is not clear. It should be clarified whether this is intended to apply to grants and exercises, in the case of option-based compensation arrangements, and to grants and vesting, in the case of other types of arrangements (non-option based).	We have not amended the Instrument in response to the proposal that information be provided on an aggregate basis. As noted above under Part 4, the fact that certain reporting insiders may be subject to executive compensation disclosure requirements does not obviate the need for disclosure of a grant through the insider reporting system. The reference to "acquisition of securities" in Part 6 includes both an acquisition of options or similar instruments at the time of the grant, and the acquisition of underlying securities at the time of exercise. CSA staff will include additional guidance relating to the reporting of compensation arrangements in CSA Staff Notice 55-308.
9	**Other – Require option grant terms to be set at the time of disclosure**	One commenter suggested that the insider reporting could be made more effective in one of two ways: 1) Require that option grant prices and terms be set on the date they are filed with regulators. 2) Require that option grant prices and terms be set in a public press release. Under currently proposed rules, whether 5 days or 10 days, if insiders file late then *the window for backdating is extended to the date of actual filing*, allowing a much greater opportunity for abuse. The commenter suggested that the penalties for late filing are not significant enough to dissuade this behaviour.	We have not amended the Instrument in response to the proposal. We agree that timely disclosure of grants of options and similar instruments is important since it fulfils each of the policy reasons for insider reporting described in section 1.3 of the Policy. Accordingly, we agree that the insider reporting system should seek to ensure there is timely disclosure about a grant. However, while the commenter's suggestions may have the effect of enhancing the timely disclosure of a grant, they would also interfere with the ability of an issuer set the terms of a grant. In addition, requiring that option grant prices and terms be set on the date they are filed with regulators may be inconsistent with existing tax and stock exchange requirements relating to grants.

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Part 6 – Disclosure of late insider filings in information circulars			
1	**Disclosure in shareholder meeting information circulars – Support**	Three commenters supported this proposal.	We have decided to withdraw this proposal at this time. However, we may reintroduce a modified version of this proposal in the future, at the time we publish for comment proposals that would harmonize late fees and other consequences of late insider filings. We will make a decision on whether to reintroduce this proposal based in part on consideration of other aspects of the harmonization proposals, including the proposed level of late fee and whether the proposal includes disclosure of late filers on CSA member websites, SEDI or elsewhere. We will also consider the general level of compliance by reporting insiders with the new requirements after the completion of an initial six-month transition period. If we reintroduce this proposal, it will be subject to a further public comment process.
2	**Disclosure in shareholder meeting information circulars – Opposition**	Fifteen commenters did not support this proposal. However, many of these commenters did support harmonization of the consequences of late insider filings across jurisdictions. Commenters cited the following reasons among others for their opposition: • Insider reports may be late for many reasons, many of which are innocent or inadvertent. Requiring such disclosure may imply a degree of materiality to the information which is in and of itself misleading. • Implementing this proposal effectively imposes a "sanction". Disclosure would be required when in fact there is no substantive adjudication of wrong-doing. One result of requiring such disclosure will be to provide a significant incentive for everyone subject to a late insider reporting fee with an explanation to contest that finding, adding more cost and stress to the system, to little benefit to anyone.	While we do not necessarily agree with certain of these comments, we have decided to withdraw this proposal at this time. However, we may reintroduce a modified version of this proposal in the future, at the time we publish for comment proposals that would harmonize late fees and other consequences of late insider filings. We will make a decision on whether to reintroduce this proposal based in part on consideration of other aspects of the harmonization proposals, including the proposed level of late fee and whether the proposal includes disclosure of late filers on CSA member websites, SEDI or elsewhere. We will also consider the general level of compliance by reporting insiders with the new requirements after the completion of an initial six-month transition period. If we reintroduce this proposal, we will provide more detailed responses to these comments at that time. If reintroduced, the proposal would be subject to a further public comment process.

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		• This type of information will not generally come within the categories of information which meet the primary objective of the preparation and distribution of an information circular, which is to provide information reasonably relevant for shareholders to vote in respect of the election of directors. • It may be inefficient and unduly harsh to both impose late filing fees and to subject those same late filers to public disclosure. In other jurisdictions where there is public disclosure of late filers, late filing fees are not also imposed, and that public disclosure has been an effective deterrent. A dual penalty is not necessary to accomplish effective deterrence and the additional cost may therefore be undue. • Securities regulators in several Canadian jurisdictions already publish information about late filings, so the information is publicly available and clearly associated with each insider's name. In addition, many reporting insiders are not directors, so including this information in an information circular bears little relevance to the core function of the circular's disclosures about individuals and director elections and would serve limited use if the same information is already publicly available through regulators. • The current deterrents of fines and publication of the event by regulators are sufficient and proportionate to the problem of late filing, such that requiring disclosure of late filing details by the issuer would often be excessive. However, should publication by issuers become a requirement, only insiders who have multiple late filings in a reasonably prescribed time period should be subject to the requirement. This would avoid unduly harsh treatment where a *de minimis* late filing has occurred, for whatever reason, since filing deadlines are currently treated as a strict compliance requirement. • An individual who has received a penalty or sanction has had the opportunity to present a defence before an impartial arbiter; an individual who receives a late filing fee has no such	

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		opportunity. To elevate late filing fees to the same disclosure status as a penalty or sanction seems unduly excessive. • The issuer is responsible for the accuracy of the disclosure in its information circular. In the commenter's case, the issuer does not file insider reports for its insiders and therefore is not aware if these reports are filed late or have been subject to late filing fees. If the CSA required the issuer to disclose late filing fees in its information circular, the issuer would have to develop new processes to gather this information. Information Circulars are becoming very detailed and complex thereby running the risk of salient information being overlooked. The commenter agreed that shareholders should readily be able to find information on late filing insiders if they so choose to, and recommended that a listing of late filing insiders be filed on SEDAR by issuers, similar to the SEDAR filing currently used for an issuer's annual report on voting. Such a stand-alone SEDAR filing would be accessible and easily searchable by any shareholder wanting to find such information. Such a report could be completed annually by issuers and filed under a special report name.	
Part 7 – Specific Requests for Comment (Appendix A to the Notice and Request for Comment) not otherwise discussed			
1	**Definition of "significant shareholder" – amendment to refer to "any class" of voting securities – Support**	Five commenters suggested the significant shareholder determination should be based on "any class of the issuer's outstanding voting securities". This would be consistent with the current requirements of item 6 of Form 51-102F5. The CSA should clarify that, when determining securityholder ownership, an insider is entitled to rely on the most recent information provided by the issuer in its continuous disclosure, as permitted by section 2.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* ("NI 62-103"). One commenter argued any consideration of the insider reporting regime should include a consideration of the relationship between the insider reporting regime and early warning reporting regime. The relationship between the two regimes is of particular	We thank the commenters for their comments. We have decided it is not appropriate at this time to amend the definition of significant shareholder, and to seek legislative amendment of the corresponding provisions in the definition of insider, to replace the language "all of the issuer's outstanding voting securities" with "any class of the issuer's outstanding voting securities". We agree with the suggestion that, when determining securityholder ownership, a person or company should be entitled to rely on the most recent information provided by the issuer in its continuous disclosure, unless the person or company is aware the information is inaccurate, and have

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		importance to insiders who are significant shareholders. The commenter urged the CSA to conform the calculation of the 10% threshold in the two regimes to the maximum extent possible. The commenter argued the benefits of calculations which are consistent in both regimes far outweigh policy reasons for using different tests.	added a new provision to Part 1 of the Instrument based on section 2.1 of NI 62-103.
2	**Definition of "significant shareholder" – amendment to refer to "any class" of voting securities – Opposition**	Seven commenters did not support amending the definition of significant shareholder to include those holding 10% of the voting rights attached to any class of the issuer's outstanding voting securities instead of all of the issuer's outstanding securities. Two commenters noted that control over 10% of the votes may not provide a shareholder with meaningful access to material undisclosed information of, or influence over, a reporting issuer. The proposed change would be inconsistent with the rationale of the reporting insider concept, since it expands the number of potential reporting insiders without reference to access or influence. Furthermore, depending on an issuer's capital structure, the proposed change could include shareholders that hold an inconsequential percentage of votes of a reporting issuer on a fully diluted basis. It is more relevant to consider a person's shareholdings within the entire structure. Given that insider reporting and the early warning system have different purposes, the commenter did not see any inconsistency in maintaining the current difference in the reporting threshold. Some commenters noted that, for early warning purposes, the test should be based on a class-by-class basis whereas it makes sense to base the insider reporting threshold on "all of the issuer's outstanding voting securities", since the underlying rationale of the insider reporting requirements relates to influence over the reporting issuer. Accordingly, they did not support changing the disclosure threshold for a "significant shareholder" so that it is calculated in respect of voting securities on a class-by-class basis.	We thank the commenters for their comments. We have decided it is not appropriate at this time to amend the definition of significant shareholder, and to seek legislative amendment of the corresponding provisions in the definition of insider, to replace the language "all of the issuer's outstanding voting securities" with "any class of the issuer's outstanding voting securities". However, we will consider this further and may propose this amendment in the future. We agree with the suggestion that, when determining securityholder ownership, a person or company should be entitled to rely on the most recent information provided by the issuer in its continuous disclosure, unless the person or company is aware the information is inaccurate, and have added a new provision to Part 1 of the Instrument based on section 2.1 of NI 62-103.
3	**Definition of "significant shareholder" – use of the term "significant shareholder"**	Two commenters were concerned about the CSA's use of the term "significant shareholder" because its definition in the Instrument diverges from the definition of "significant shareholder" provided in the Universal Market Integrity Rules (UMIR) and therefore may	We acknowledge the comment. However, we have not amended the instrument as we think the term facilitates readability and that the potential for confusion between the insider reporting regime and the UMIR regime is limited.

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		cause confusion. One commenter suggested that the CSA address this issue either by harmonizing the thresholds or changing the defined term.	
4	**Concept of "post-conversion beneficial ownership" – support – inclusion of 60-day convertibles – Support**	Several commenters supported harmonization of the insider reporting regime with the early warning regime. Several commenters suggested it should be clarified that the calculation basis is the same for both regimes. In those instances where the number of shares issuable on conversion is not fixed at the time of issuance of the convertibles, insider reporting may be difficult. If possible, the ability to explain the conversion feature should be added to the form of insider report without having to disclose a specific number of shares. No exemption for "out of the money" convertible securities should be provided since this would make monitoring more complicated. One commenter urged the CSA to conform the concepts of post-conversion beneficial ownership within the insider reporting and early warning reporting regimes to the maximum extent possible. One commenter supported the concept but suggested an exemption for out-of-the-money convertibles once an appropriate threshold had been identified.	We have not amended the definition of "significant shareholder based on post-conversion beneficial ownership" as we think such shareholders should have the same reporting requirements as significant shareholders. Accordingly, the test for 60-day convertibles in the early warning regime and the insider reporting regime are substantially harmonized. We have also amended subsection 3.2(2) to clarify that, if a significant shareholder based on post-conversion beneficial ownership is a reporting insider of an issuer, every director and CEO, CFO and COO of the shareholder will also be reporting insiders for that issuer.
5	**Concept of "post-conversion beneficial ownership" – inclusion of 60-day convertibles – Opposition**	Several commenters opposed this proposal. Two commenters suggested the calculation of the 10% threshold for the definition of "significant shareholder" should not be based on the concept "post-conversion beneficial ownership". The underlying rationale of the insider reporting requirements relates to influence over the reporting issuer. A security holder holding less than 10% of an issuer's voting rights on a pre-conversion basis is generally not in a position to exercise sufficient influence until the conversion rights are exercised and further voting securities are acquired. Therefore, it is not appropriate for the security holder to be considered a "significant shareholder" until it actually has those voting rights.	Please see response in 4.

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		The commenter also suggested that it is inappropriate to include convertible securities that are significantly out of the money in making such this calculation, since it may be unlikely such conversion rights will ever be exercised. Nevertheless, a commenter acknowledged that under U.S. rules, the basis for determining whether a shareholder holds at the 10% level for early warning and insider reporting purposes is the same, and that beneficial ownership of the underlying securities includes ownership of convertible securities if they are convertible within 60 days. Accordingly, the proposal would be more consistent with U.S. rules.	
6		One commenter noted that harmonizing the determination of beneficial ownership for the purposes of insider reporting with deemed beneficial ownership in the context of the take-over bid and early warning requirements may lead to unnecessary reporting. Although the anti-avoidance rationale applies equally to insider reporting, the specific mechanisms used in the take-over bid and early-warning provisions may not be appropriate in the context of insider reporting.	Please see response in 4.
7		One commenter suggested that introducing the concept of post-conversion beneficial ownership is problematic. While used in the early warning reporting context, it causes significant problems in the case of out-of-the-money convertible securities and leads to strange results by failing to account for the entire class of subject securities on a fully diluted basis. For example, a holder of a portion of an issue of special warrants may be subject to a reporting obligation despite the fact that, if all of the special warrants are taken into account, the holder would not be a "significant shareholder." For early warning purposes there is sufficient flexibility to explain this. SEDI filings do not allow for such explanations. In the first instance the commenter recommends against it. However, if such proposal is to go forward, the commenter would recommend permitting the calculation to be done on a fully-diluted	Please see response in 4.

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		basis and excluding counting convertible securities that are out-of-the-money. These comments apply to proposed NI 55-104, and on a broader basis, to the early warning reporting requirements as well.	
8		Regarding the CSA's request for comment on whether convertible securities (such as options) that are significantly "out of money" should be exempted from post-conversion beneficial ownership calculation for the purposes of determining insider status, a commenter noted that the description "significantly out of money" is vague and recommends that the CSA add a definition of the term to the Proposed Instrument. If the CSA proceeds with introducing the concept of "post-conversion beneficial ownership", the commenter agrees that convertible securities that are significantly "out of money" should be exempted. In addition, the commenter agrees that "eligible institutional investors" should be exempted from the post-conversion beneficial ownership calculation. One commenter did not believe that introducing the concept of "post-conversion beneficial ownership" from the early warning regime into the insider reporting regime is appropriate. Insider reporting is based on routine access to material undisclosed information and significant influence over a reporting issuer. Generally these thresholds are crossed by individuals who have seniority at an issuer or individuals who have access based on holding voting securities. The commenter does not feel it is appropriate for the insider reporting requirement to be triggered earlier because there is no correlation between a holding of a convertible security and routine access to material undisclosed information and significant influence over a reporting issuer.	Please see response in 4.
9		One commenter proposed that institutional investors, such as development capital funds, should be exempt from the application of this definition for insider reporting purposes. The commenter believed these new provisions would have a significant impact on the Funds. As part of its operations, the Funds purchase securities and financial instruments related to the securities of issuers and reporting issuers in which they invest, which are convertible. The conversion right attached to these securities and related financial instruments, whether automatic or exercised at the	As explained in the Notice, the concept of "significant shareholder based on post-conversion beneficial ownership" is based on a similar concept which exists in the early warning regime. Accordingly, development capital funds are already required to take into account the post-conversion beneficial ownership of financial instruments when determining their early warning reporting requirements.

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		option of the Funds, is usually subject to the occurrence of an event of default or future events which are unknown at the time of purchase. The commenter does not believe it advisable to calculate the interest in an issuer taking into account the post-conversion beneficial ownership of financial instruments which may never be converted and to which no voting right is attached prior to the conversion. The commenter believes current practice is more than adequate as it requires that the convertible financial instruments held by an insider be reported without being used to determine its interest in the issuer and thereby cause it to become an insider.	
10	**Report by certain designated insiders for certain historical transactions – Support**	One commenter supported the proposal to require designated insiders to file insider reports in accordance with the deemed insider look-back provisions in paper format on SEDAR. The commenter agreed that these filings commonly arise in a take-over bid and it makes sense for market participants to view these filing in conjunction with other filings on SEDAR relating to the take-over bid. Such filings should be made on SEDAR in a category specifically designated for insider related reports.	We have amended the deemed insider look-back provisions to limit the application of these provisions to directors and the CEO, CFO and COO. Please see subsections 1.2(2) and (3) and section 3.6 of the Instrument. In addition, we have responded to the concerns expressed by a large majority of the commenters that insider reports should be accessible in one location and amended the provisions so that these reports must be made on SEDI rather than SEDAR.
11		One commenter noted that, while the CSA has reduced the number of insiders that need to file insider reports by creating the concept of a reporting insider, it does not appear that this logic has been applied to the look back provisions included in section 3.6 of the Instrument. The commenter recommended that the CSA amend the look back provision so that instead of applying to all officers, the look back only applies to the officers that are identified in the reporting insider concept. Some commenters supported the CSA's desire to harmonize the deemed look back provisions by including them in the Instrument. These commenters do not believe that filing on SEDAR is an appropriate solution. Some said that SEDAR is a proprietary system that is not web based. Consequently, insiders cannot file on SEDAR without hiring a filing agent.	We have amended the deemed insider look-back provisions to limit the application of these provisions to directors and the CEO, CFO and COO. Please see subsections 1.2(2) and (3) and section 3.6 of the Instrument. In addition, we have amended the provisions so that these reports must be made on SEDI.

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		Several commenters think the filing must remain on SEDI. Nonetheless, it urges the CSA to continue to try to address this issue. One commenter suggested one approach might be to modify SEDI to make it clear when a look back filing is being made.	
Part 8 – Consequential Amendments			
1	**Consequential Amendment to the Early Warning Regime** **NI 62-103**	One commenter disagreed with the proposal to amend NI 62-103 to exclude the supplemental insider reporting obligation from the scope of the insider reporting exemption in NI 62-103. The commenter noted this would require eligible institutional investors to report all transactions under the supplemental insider reporting obligation on SEDI within 5 days, while allowing them to report aggregate changes in direct ownership over the 2.5% thresholds on a monthly basis on SEDAR under the alternative monthly reporting system. The commenter suggested that the concern that derivative transactions may not be captured in NI 62-103 would be better addressed through conditions to the insider reporting exemption in NI 62-103.	We agree with this comment and have revised the proposed amendment to NI 62-103. As a result of this change, an eligible institutional investor will be exempt from the insider reporting requirement, including the requirements relating to related financial instruments and agreements, arrangements and understandings contemplated by Part 4 of NI 55-104, if the eligible institutional investor includes similar disclosure in its early warning filings.
2		One commenter stated he did not agree with the proposed changes to NI 62-103. The commenter suggested that, contrary to the suggestion under paragraph 9 of the request for comments, s. 2.2(c) of MI 55-103 exempts eligible institutional investors from equity monetization reports in the same way that Part 9 of NI 62-103 exempts eligible institutional investors from the insider reporting requirement generally. This is appropriate, as the structure of the alternative monthly reporting system was designed to enable eligible institutional investors to only review their holdings on a monthly basis. A similar approach should apply under the proposed amendments as currently exists. The proposed amendments would result in imposing a requirement upon an eligible institutional investor to disclose interests covered by Part 4 of NI 55-104 even though such investor would not have any corresponding requirement to file an initial insider report	We have amended the proposed amendments to NI 62-103 in response to this comment and the similar comment above. As a result of this change, an eligible institutional investor will be exempt from the insider reporting requirement, including the requirements relating to related financial instruments and agreements, arrangements and understandings contemplated by Part 4 of NI 55-104, if the eligible institutional investor includes similar disclosure in its early warning filings.

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		outside of the alternative monthly reporting systems.	
3		One commenter urged the CSA to consider the provisions contained in NI 62-103 in conjunction with its consideration of the insider reporting regime, as NI 62-103 contains an alternative reporting regime relied upon by a notable reporting segment of Canadian capital markets.	We will consider these comments as part of a broader initiative to review the early warning regime.
4	**NI 62-103 – Opposition to alternative monthly reporting system**	One commenter opposed the alternative reporting system in Part 4 of NI 62-103 part 4 and the associated exemption from the insider reporting requirement in Part 9 of NI 62-103. The commenter suggested that all significant shareholders should be required to file on SEDI and called for the elimination of the exemption in NI 62-103 for eligible institutional investors. The commenter suggested that having a dual reporting structure is costly and confusing for investors and does not promote transparency. Instead, it provides an advantage to large domestic investors who have the resources to monitor the flood of mid-month alternative report filings on SEDAR. While the interests of eligible fund holders and pension plan participants are important, the interest of transparency for all global investors is paramount.	We have not amended the Instrument in response to this comment. We will consider these comments as part of a broader initiative to review the early warning regime.
5	**Part 4 of NI 55-104 - Supplemental insider reporting requirement for derivatives**	One commenter supported Part 4 of the Instrument to the extent that only monetization transactions are covered by this new provision and assuming the provision did not include other types of trading in derivatives.	As explained in the Policy, the supplemental insider reporting requirement is consistent with the former insider reporting requirement for derivatives that previously existed in some jurisdictions under former MI 55-103. However, because Part 3 of the Instrument requires insiders, as part of the primary insider reporting requirement, to file insider reports about transactions involving "related financial instruments", most transactions that were previously subject to a reporting requirement under former MI 55-103 will be subject to the primary insider reporting requirement under Part 3 of the Instrument.
Part 9 – Future Initiatives			
1	**Harmonized filing fees**	The majority of commenters who commented on this issue	We thank the commenters for their comments.

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		supported the proposed future initiative of harmonizing late filing fees. One commenter stated it makes no sense to have non-uniform rules for late filing depending on provincial jurisdiction. The commenter recommended that the fee schedule be harmonized across Canada. As regards the amount, the commenter concluded that the token amount will not be a deterrent for late filers if it offers them advantage. The CSA should also reveal how it will treat chronic late /incomplete or non-filers. One commenter believed that the current fees set out in section 274.1 of the QSA, namely, $100 per failure to report for each day during which the insider is in default up to a maximum $5,000 fine, are not high enough to deter offenders. In the commenter's opinion, this harmonization should include the most stringent penalties. In this regard, Québec is the most strict regulatory authority. The commenter suggested that the $5,000 ceiling be abolished and that wrongdoing and non-compliant conduct be punished according to how extensive it is. The commenter also recommended that late insider trading reports indicate the amount of the trades in question as well as the fees charged to offenders. One commenter urged the CSA to review late insider reporting fee requirements, especially in light of the proposed contraction of the filing requirement to five days. Because the current regime varies from jurisdiction to jurisdiction, and is variously applied, it is difficult for market participants to understand and quantify the consequences of late insider reporting. In addition, the commenter suggested it was appropriate to impose a maximum fee payable across all jurisdictions. The commenter suggested that the calculation of fees in some jurisdictions is excessive. One commenter recommended that the CSA harmonize late filing fees across Canadian jurisdictions and eliminate the imposition of a late filing fee where the lateness only occurred as a result of rectifying an error on the original report filed within the deadline.	
2	**Hidden ownership and**	One commenter stated that one area that has been of concern is that	We thank the commenters for the comments.

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	empty voting	of empty voting by hedge funds and other entities. The commenter requested that the CSA clarify the rules surrounding securities lending and ownership/voting rights. Such votes distort the marketplace and can lead to disenfranchisement for retail investors. In particular, the commenter asked the CSA to consider rescinding the right for a mutual fund to engage in securities lending. This lending adds significant risk to fund unitholders while providing minimal benefit. One commenter noted that this increasingly widespread use of derivatives by hedge funds in connection with proxy battles and take-over bids has encouraged, over the past year: • "over 40 New York Stock Exchange-listed US companies (to amend) their bylaws to require shareholders nominating directors for election to state their shareholdings, including any derivatives that provide the shareholder with economic exposure to the company's shares; • " … some US issuers (to amend) their shareholder rights plans … to expand the definition of beneficial ownership contained in such documents to include equity swap positions." The commenter thinks that the Canadian regulatory authorities should be more proactive. One commenter noted (in connection with the comment re post-conversion beneficial ownership) "We are a reporting issuer that is committed to transparency and believe that investors should be similarly committed. In fact, it is disingenuous that investors can demand full transparency from a reporting issuer while remaining largely in the shadows themselves. We want to know who our shareholders are and how we may engage them in understanding their investment."	As explained in the Notice, we are reviewing the recent reform proposals in other jurisdictions and are considering developing similar proposals for Canada. We will consider the comments in the course of developing these proposals. The CSA are reviewing issues relating to empty voting and securities lending as part of a separate initiative.
3	**Enforcement of insider reporting requirements**	One commenter was critical of the level of enforcement of insider reporting and other securities law requirements and stated that rules without enforcement are of little value. The commenter expected the	As explained in Part 10 of 55-104CP, it is an offence to fail to file an insider report in accordance with the filing deadlines prescribed by the Instrument or to submit information in an

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		CSA to enforce these reporting rules with vigour and to report annually on the statistics, late filing fees paid, other sanctions applied, SEDI and enforcement process improvements etc.	insider report that is materially misleading. Part 10 outlines the potential penalties, sanctions and other consequences that may result from non-compliance. The CSA expect issuers and insiders to comply with their obligations and will take enforcement action where appropriate in the case of serious or repeated non-compliance.
4		One commenter suggested the consequences (i.e., penalties) attached to a failure to comply with insider reporting requirements relating to grants of options must be sufficiently meaningful to promote compliance. The commenter cited U.S. research that shows clearly that the evidence of backdating is amplified when the report of an option grant is filed late. The commenter suggested that current CSA late filing fees do not appear to be a significant deterrent, even if rigorously enforced.	Please see response in 3.
5		One commenter was most concerned about the insider who uses complex arrangements to avoid filing and detection. In such cases, regulators must have at their disposal very harsh penalties. This would not only promote justice, but also raise the stakes for those considering undertaking nefarious activities such as hidden ownership empty and parked voting strategies and, perhaps most importantly, nominee offshore accounts.	Please see response in 3.
6	**Other – Transitional Period**	Several commenters suggested the CSA include a transitional period of 6 months to make sure insiders will be familiar with their new insider reporting requirements.	We have amended the Instrument to include a transition provision that will give insiders additional time if they need it to comply with the new insider reporting requirements. Accordingly, issuers and insiders will have an additional six months to become familiar with the new reporting requirements in the Instrument and to make necessary arrangements with third-party service providers.
7	**Other – Mutual Funds**	One commenter questioned why mutual funds are exempted from insider reporting in those cases where the fund family is a significant shareholder as a result of the cumulative ownership of shares in its many mutual funds. To a large extent, investment funds **are** the market in Canada. They certainly have *control and direction* over the shares and bonds. In the case of the fund companies that	Section 9.1 of the Instrument provides an exemption from the insider reporting requirement for an insider of an issuer that is a mutual fund. The exemption applies to transactions involving units of the mutual fund. To the extent a mutual fund is significant shareholder of another reporting issuer, the mutual fund will be required to file insider reports relating to that

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		have brokerage affiliates, banking or investment banking operations, the conflict of interest can be significant. These funds clearly have voting rights which they can and do exercise and report upon, albeit with significant delay. When they make trades, the impact can be significant to the market. Indeed the impact may be greater than any one individual insider that is required to file transactions.	reporting issuer in the normal manner.
8	**Other – Broker DRIPS**	One commenter noted the Instrument continues to define an "automatic securities purchase plan" to include, in part, issuer-established dividend reinvestment plans meeting the other requirements of the definition. Many brokerages offer "broker dividend reinvestment plans" that automatically use dividends received in the brokerage account to purchase additional securities of the issuer that made the dividend payment. Provided that such plan meets the other requirements of a "automatic securities purchase plan" set out in the definition, it is not clear why reporting insiders participating in such plans would not have the benefit of deferred reporting. The commenter recommended removing the requirement that that the plan be issuer-established in order to be eligible for deferred reporting.	We have not amended the Instrument in response to this comment. We will consider applications for relief in appropriate circumstances.
9	**Other – Sales to address margin requirements**	One commenter recommended that insiders be required to disclose purchases or sales of securities using margin arrangements with brokerages. The commenter suggested considering whether a new SEDI code should be implemented that identifies a "public market margined acquisition/disposition". This would identify at the time of purchase or sale that the insider transacted on margin. There may be better solutions to tackle this problem, but the issue needs to be addressed.	We have not amended the Instrument in response to this comment. The Canadian insider reporting regime generally does not require an insider to explain the reasons for a transaction although an insider may choose to do so through the general remarks section on SEDI or through other public disclosure.
10	**Other – Guidance re "indirect trades"**	One commenter requested additional guidance regarding the required filings for "indirect" trades by insiders through corporations. The commenter did not think the existing rules clearly enough define which partly owned corporations are insiders themselves and which trades by such partly owned corporations have to be shown as an indirect trade by the insider.	We have included guidance in the Policy relating to the meaning of the terms "beneficial ownership" and "control or direction". As explained in Part 3 of the Policy, reporting insiders must file insider reports in respect of transactions in securities over which the insider has or shares "control or direction". A person will generally have or share control or direction over securities if the person, directly or indirectly, through any contract,

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			arrangement, understanding or relationship or otherwise has or shares • voting power, which includes the power to vote, or to direct the voting of, such securities and/or • investment power, which includes the power to acquire or dispose, or to direct the acquisition or disposition of such securities.
11	**Other – definition of "economic exposure" – proposal for exemption from Part 4 based on lack of knowledge**	One commenter suggested that, if an insider is unaware that its economic exposure to the reporting issuer (or interest in its securities) has altered in particular circumstances, there should not be a requirement for the insider to file a report under NI 55-104, so long as the insider remains unaware of the alteration.	Section 9.7(d) of the Instrument contains an exemption from the Part 4 requirement for a reporting insider who did not know and, in the exercise of reasonable diligence, could not have known of the alteration to economic exposure described in section 4.1 of the Instrument. We have amended the Instrument to include an exemption from the Part 4 requirement corresponding to subsection 2.2(a) of MI 55-103 and subsection 3(a) of BCI 55-506.
12	**Other – definition of "issuer event"**	One commenter recommended that the definition of "issuer event" be amended to include issuer repurchases or that another exemption be added to address the situation where an issuer repurchases and then cancels securities under an issuer bid, with the result that an investor becomes an insider (and under the Instrument, a "significant shareholder") through no action of his, her or its own. The commenter noted that, similar to the other events listed in the definition of "issuer event," the investor may not become aware of its having become a "significant shareholder" until well after the reporting deadline. As repurchases and cancellations of securities under an issuer bid may not affect all holdings "in the same manner, on a per share basis" as set out in the definition of issuer event, the definition should be amended to expressly include repurchases by the issuer, or an equivalent exemption should be provided. The commenter noted that the equivalent exemption from the early warning requirements in s. 6.1 of NI 62-103 is not similarly limited, and applies to a broader range of reductions in outstanding	We have added a new provision to Part 1 of the Instrument based on section 2.1 of NI 62-103. This provision provides that, when determining securityholder ownership, a person or company may rely on the most recent information provided by the issuer in its continuous disclosure, unless the person or company is aware the information is inaccurate.

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		securities resulting from "issuer actions," including repurchases by the issuer itself. In his view, a similar exemption should also be available from the insider reporting requirement.	
13	**Other – Section 1.2 – Persons designated or determined to be insiders.**	One commenter suggested that subsection 1.2(1) should be amended so that it is clear that persons identified in section 1.2 are designated or determined to be insiders for the purposes of NI 55-104 only.	We have added guidance to the Policy to make it clear that persons identified in section 1.2 are designated or determined to be insiders for the purposes of NI 55-104 only. However, in many cases, persons and companies designated or determined to be insiders will also be insiders in another capacity.
14	**Other – Part 5 – Automatic securities purchase plans**	One commenter noted that automatic securities purchase plans are expressly provided for yet automatic securities disposition plans are not. While subsection 5.1(3) of the proposed Policy contemplates circumstances under which the regulators may consider granting exemptive relief for automatic securities disposition plans, the commenter suggested that consideration should be given to including an express exemption in NI 55-104 itself on the basis of the criteria for relief outlined in the Companion Policy.	We have not amended the Instrument in response to this comment. Automatic securities purchase plans may raise different considerations from automatic securities disposition plans in that the former are typically established and administered by the issuer while the latter, in many cases, are private arrangements between the reporting insider and their broker. Although the principles underlying the exemptive relief may be similar, the lack of issuer involvement in the latter may raise additional concerns. Accordingly, we will consider applications for exemptive relief on a case-by-case basis.
15	**Other – Exemptions – Section 9.5**	One commenter questioned whether subsection 9.5(b) should also include reference to reporting of interests required under Part 4 of NI 55-104.	We have not amended the Instrument in response to this comment. The exemption is available if the affiliated reporting insider has filed an insider report that discloses substantially the same information as would be contained in an insider report filed by the reporting insider. This would include information relating to interests described in Part 4 of the Instrument.
16	**Other – Exemptions – Section 9.7**	One commenter requested the exemptions in subsection (e) be clarified. The commenter also questioned whether the exemptions set out in subsection (e) or (f) are worded broadly enough to cover all reporting obligations under Part 3 and 4 of NI 55-104. For	We have not amended the Instrument in response to this comment. The exemptions in subsections s. 9.7(e) and (f) are substantially consistent with the exemptions in ss. 2.2(i) and (j) of MI 55-103 and corresponding exemptions in Part 3 of BCI

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		example, should references to an acquisition or disposition of a security or an interest in a security also include an interest in, or right or obligation associated with, a related financial instrument? Similarly, the interests set out in subsections (e) and (f) do not clearly apply to reporting obligations that could be triggered under Part 4. The result is that a person may not have a reporting requirement with respect to direct or indirect beneficial ownership, control or direction of the securities, but may still have a reporting obligation with respect to related financial instruments or agreements or arrangements covered by Part 4. Additional guidance should also be provided for the purposes of determining whether the securities form a "material component" of an investment fund's market value for the purposes of subsection (e).	55-506. We have added an exemption corresponding to s. 2.2(a) of MI 55-103 and subsection 3(a) of BCI 55-506. We are not aware of any difficulties in applying these exemptions under the current insider reporting regime.
17	**Other – Exemptions – Section 9.7 – Proposed exemption for development capital funds**	One commenter proposed a new exemption for development capital funds. The commenter was concerned that, under the Instrument, every time a development capital fund becomes a significant shareholder of a reporting issuer as a result of an investment made in the ordinary course of business, its directors, several of its officers and other insiders would be required to file an insider report. This would impose a significant additional burden on development capital funds in terms of workload and costs.	We have not amended the Instrument in response to this comment. The consequences of a development capital fund becoming a significant shareholder, and therefore an insider, of a reporting issuer arise under current legal requirements. The Instrument significantly narrows the class of persons required to file insider reports as compared with current legal requirements. Accordingly, we expect the Instrument will significantly reduce the administrative burden associated with insider reporting. We also note that, if a development capital fund is an "eligible institutional investor" under NI 62-103, the fund may be entitled to rely on the alternative monthly reporting system contained in NI 62-103.
18	**Other – General Anti Avoidance Rule**	One commenter suggested that the CSA consider adding a General Anti-Avoidance Rule (GAAR) that would require firms and individuals to report any form of arrangement that moves equity-derived or stock-based assets or cash from the Company balance sheet to them or related parties/entities.	We do not think it is necessary to add a separate GAAR provision similar to the GAAR provision that exists in the *Income Tax Act* (Canada). As explained in Part 4 of 55-104CP, If a reporting insider enters into a transaction which satisfies one or more of the policy rationale for insider reporting, but for technical reasons it may be argued that the transaction falls outside of the primary insider reporting requirement in Part 3 of the Instrument, the insider will be required to file an insider report under Part 4 unless an exemption is available to the insider. In this way, the market can make its own

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			determination as to the significance, if any, of the transaction in question.