

Appendix C

Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions*

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

- (1) National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (the Instrument) sets out the principal insider reporting requirements and exemptions for insiders of issuers that are reporting issuers.¹
- (2) The purpose of this Policy is to help you understand how the Canadian Securities Administrators (the CSA or we) interpret or apply certain provisions of the Instrument.

1.2 Background to the Instrument

- (1) The Instrument centralizes the principal insider reporting requirements and most exemptions in one location to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance.
- (2) The focus of the Instrument is on the substantive legal insider reporting requirements rather than the procedural requirements relating to the electronic filing of insider reports. Issuers and insiders should review National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102 SEDI) in order to determine their obligations for the electronic filing of insider reports.
- (3) Although the Instrument sets out the principal insider reporting requirements and exemptions for issuers and insiders in Canada, a number of other instruments also contain exemptions from the insider reporting requirements, including
 - (a) National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);
 - (b) National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103);

¹ In Ontario, the principal insider reporting requirements are set out in Part XXI of the *Securities Act* (Ontario) (the Ontario Act). See Part 2 of this Policy.

- (c) National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101); and
- (d) National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102).

We have not included the insider reporting exemptions from these instruments in the Instrument as we think these exemptions are better situated within the context of these other instruments. However, issuers and insiders may wish to review these instruments in determining whether any additional exemptions from the insider reporting requirements are available.

1.3 Policy Rationale for Insider Reporting in Canada

- (1) The insider reporting requirements serve a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.
- (2) Insider reporting also helps prevent illegal or otherwise improper activities involving stock options and similar equity-based instruments, including stock option backdating, option repricing, and the opportunistic timing of option grants (spring-loading or bullet-dodging), since the requirement for timely disclosure of option grants and public scrutiny of such disclosure will generally limit opportunities for insiders to engage in improper dating practices.
- (3) Insiders should interpret the insider reporting requirements in the Instrument with these policy rationales in mind and in a manner that gives priority to substance over form.

1.4 Definitions used in the Instrument

- (1) **General** – Many of the terms for which the Instrument provides definitions are defined in the securities legislation of certain jurisdictions but not others. A term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern insider reporting; or (b) the context otherwise requires.

Accordingly, the definition of these terms in the Instrument uses the phrase “despite paragraph (a), in [*certain enumerated jurisdictions*], this term has the

same meaning as in securities legislation”. This means that, in the case of the jurisdictions specifically identified in the definition, the definition in the securities statute applies. However, in the case of the jurisdictions not specifically identified in the definition, the definition in the Instrument applies.

The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Instrument.

- (2) **Directors and Officers** — Where the Instrument uses the term “directors” or “officers”, insiders of an issuer that is not a corporation must refer to the definitions in securities legislation of “director” and “officer”. The definitions of “director” and “officer” typically include persons acting in capacities similar to those of a director or an officer of a company or individuals who perform similar functions. Corporate and non-corporate issuers and their insiders must determine, in light of the particular circumstances, which individuals or persons are acting in such capacities for the purposes of complying with the Instrument.

Similarly, the terms “chief executive officer” and “chief financial officer” include the individuals that have the responsibilities normally associated with these positions or act in a similar capacity. This determination is to be made irrespective of an individual’s corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

- (3) **Economic Interest** — The term “economic interest” in a security is a core component of the definition of “related financial instrument” which is part of the primary insider reporting requirement in Part 3 of the Instrument. We intend the term to have broad application and to refer to the economic attributes ordinarily associated in common law with beneficial ownership of a security, including

- the potential for gain in the nature of interest, dividends or other forms of distributions of income on the security;
- the potential for gain in the nature of a capital gain realized on a disposition of the security, to the extent that the proceeds of disposition exceed the tax cost (that is, gains associated with an appreciation in the security’s value); and
- the potential for loss in the nature of a capital loss on a disposition of the security, to the extent that the proceeds of disposition are less than the tax cost (that is, losses associated with a fall in the security’s value).

For example, a reporting insider who owns securities of his or her reporting issuer could reduce or eliminate the risk associated with a fall in the value of the securities while retaining ownership of the securities by entering into a derivative transaction such as an equity swap. The equity swap would represent a “related financial instrument” since, among other things, the agreement would affect the reporting insider’s economic interest in a security of the reporting issuer.

- (4) **Economic Exposure** – The term “economic exposure” is used in Part 4 of the Instrument and is part of the supplemental insider reporting requirement. The term generally refers to the link between a person’s economic or financial interests and the economic or financial interests of the reporting issuer in which the person is an insider.

For example, an insider with a substantial proportion of his or her personal wealth invested in securities of his or her reporting issuer will be highly exposed to changes in the fortunes of the reporting issuer. Conversely, an insider who holds no securities of a reporting issuer (and does not participate in a compensation arrangement involving securities of the reporting issuer) will generally have exposure limited to their salary and any other compensation arrangements that do not involve securities of the reporting issuer.

All other things being equal, if an insider changes his or her ownership interest in a reporting issuer (either directly, through a purchase or sale of securities of the reporting issuer, or indirectly, through a derivative transaction involving securities of the reporting issuer), the insider will generally be changing his or her economic exposure to the reporting issuer. Similarly, if an insider enters into a hedging transaction that has the effect of reducing the sensitivity of the insider to changes in the reporting issuer’s share price or performance, the insider will generally be changing his or her economic exposure to the reporting issuer.

- (5) **Major Subsidiary** – The definition of “major subsidiary” is a key element of the definition of “reporting insider”. The determination of whether a subsidiary is a major subsidiary will generally require a backward-looking determination based on the issuer’s most recent annual audited or interim financial statements.

If an issuer acquires a subsidiary or undertakes a reorganization, with the result that a subsidiary will come within the definition of major subsidiary once the issuer next files its annual audited or interim financial statements, the subsidiary will not be a major subsidiary until such filing, and directors and officers of the subsidiary will not be reporting insiders until such filing.

Although not required to do so, insiders may choose to file insider reports upon completion of the acquisition or reorganization rather than wait for the issuer to file its next set of financial statements. Similarly, if a subsidiary ceases to be a major subsidiary because of an acquisition or other reorganization by the parent issuer, but the subsidiary continues to be a major subsidiary based on information contained within the issuer's most recently filed financial statements, the issuer or reporting insiders may wish to consider applying for an exemption from the insider reporting requirement.

- (6) **Related Financial Instrument** – Historically, there has been some uncertainty as to whether, as a matter of law, certain derivative instruments involving securities are themselves securities. This uncertainty has resulted in questions as to whether a reporting obligation existed or how insiders should report the instrument. The Instrument resolves this uncertainty through the definition of “related financial instrument”. Under the Instrument, it is generally not necessary to determine whether a particular instrument is a security or a related financial instrument since the insider reporting requirement in Part 3 of the Instrument applies to both securities and related financial instruments.

To the extent the following instruments do not, as a matter of law, constitute securities, they will generally constitute related financial instruments:

- a forward contract, futures contract, stock purchase contract or similar contract involving securities of the insider's reporting issuer;
- options issued by an issuer other than the insider's reporting issuer;
- stock-based compensation instruments, including phantom stock units, deferred share units (DSUs), restricted share awards (RSAs), performance share units (PSUs), stock appreciation rights (SARs) and similar instruments;
- a debt instrument or evidence of deposit issued by a bank or other financial institution for which part or all of the amount payable is determined by reference to the price, value or level of a security of the insider's reporting issuer (a linked note); and
- most other agreements, arrangements or understandings that were previously subject to an insider reporting requirement under former

PART 2 APPLICATION

2.1 Application in Ontario – In Ontario, the insider reporting requirements are set out in Part XXI of the Ontario Act. For this reason, sections 3.3 and 3.4 of the Instrument do not apply in Ontario. However, the insider reporting requirements set out in the Instrument and in Part XXI of the Ontario Act are substantially harmonized. Accordingly, in this Policy, we omit separate references to the requirements of the Ontario Act except where it is necessary to highlight a difference between the requirements of the Instrument and the Ontario Act.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1 Meaning of beneficial ownership

- (1) **General** – The term “beneficial ownership” is not defined in securities legislation. Accordingly, beneficial ownership must be determined in accordance with the ordinary principles of property and trust law of a local jurisdiction. In Québec, due to the fact that the concept of beneficial ownership does not exist in civil law, the meaning of beneficial ownership has the meaning ascribed to it in section 1.4 of Regulation 14-501Q. The concept of beneficial ownership in Québec legislation is often used in conjunction with the concept of control and direction, which allows for a similar interpretation of the concept of common law beneficial ownership in most jurisdictions.
- (2) **Deemed beneficial ownership** – Although securities legislation does not define beneficial ownership, securities legislation in certain jurisdictions may deem a person to beneficially own securities in certain circumstances. For example, in some jurisdictions, a person is deemed to beneficially own securities that are beneficially owned by a company controlled by that person or by an affiliate of such company.
- (3) **Post-conversion beneficial ownership** – Under the Instrument, a person has “post-conversion beneficial ownership” of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the security within 60 days. For example, a person who owns special warrants convertible at any time and without payment of additional consideration into common shares will be considered to have post-conversion beneficial ownership of the underlying common shares. Under the Instrument, a person who has post-

conversion beneficial ownership of securities may in certain circumstances be designated or determined to be an insider and may be a reporting insider. For example, if a person owns 9.9% of an issuer's common shares and then acquires special warrants convertible into an additional 5% of the issuer's common shares, the person will be designated or determined to be an insider under section 1.2 of the Instrument. The person will be a reporting insider because the person will be a "significant shareholder based on post-conversion beneficial ownership" under section 3.2 of the Instrument.

The concept of post-conversion beneficial ownership of the underlying securities into which securities are convertible within 60 days is consistent with similar provisions for determining beneficial ownership of securities for the purposes of the early warning requirements in section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and in Ontario, subsection 90(1) of the Ontario Act.

- (4) **Beneficial ownership of securities held in a trust** – Under common law trust law, beneficial ownership is commonly distinguished from legal ownership. Under the civil law, a trust is governed by the Quebec Civil Code. Under the common law, a trustee is generally considered to be the legal owner of the trust property; the beneficiary, the beneficial owner. A reporting insider who has a beneficial interest in securities held in a trust may have or share beneficial ownership of the securities for insider reporting purposes, depending on the particular facts of the arrangement and upon the governing law of the trust, whether common law or civil law. We will generally consider a person to have or share beneficial ownership of securities held in a trust if the person has or shares
- (a) a beneficial interest in the securities held in the trust and has or shares voting or investment power over the securities held in the trust; or
 - (b) legal ownership of the securities held in the trust and has or shares voting or investment power over the securities held in the trust.
- (5) **Disclaimers of beneficial ownership** – The CSA generally will not regard a purported disclaimer of a beneficial interest in or beneficial ownership of securities as being effective for the purposes of determining beneficial ownership under securities legislation unless such disclaimer is irrevocable and has been generally disclosed to the public.
- 3.2 Meaning of control or direction** – The term "control or direction" is not defined in Canadian securities legislation except in Québec, where the *Securities Act*

(Québec), in sections 90, 91 and 92, define the concept of control and deems situations where a person has control over securities. A person will generally have control or direction over securities if the person, directly or indirectly, through any contract, arrangement, understanding or relationship or otherwise has or shares

- (a) voting power, which includes the power to vote, or to direct the voting of, such securities and/or
- (b) investment power, which includes the power to acquire or dispose, or to direct the acquisition or disposition of such securities.

This would include having control or direction over the securities through a power of attorney, a grant of limited trading authority, or management agreement. This would also include a situation where a reporting insider acts as a trustee for an estate (or in Québec as a liquidator) or other trust in which securities of the reporting insider's issuer are included within the assets of the trust. This may also be the case if a spouse (or any other person related to the reporting insider) owns the securities or acts as trustee, but the reporting insider has or shares control or direction over the securities held in trust.

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1 Supplemental insider reporting requirement

- (1) Part 4 of the Instrument contains the supplemental insider reporting requirement. 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.
- (2) If a reporting insider enters into an equity monetization transaction or other derivative-based transaction that falls outside of the primary insider reporting requirement in Part 3 of the Instrument, the reporting insider must report the transaction under Part 4. For example, certain types of monetization transactions may be found to alter an insider's “economic exposure” towards the insider's issuer but not alter the insider's “economic interest in a security”. If a reporting insider enters into this type of transaction, the insider must report the transaction

under Part 4.

4.2 Insider reporting of equity monetization transactions

- (1) **What are equity monetization transactions?** There are a variety of sophisticated derivative-based strategies that permit investors to dispose, in economic terms, of an equity position in a public company without attracting certain tax and non-tax consequences associated with a conventional disposition of such position. These strategies, which are sometimes referred to as “equity monetization” strategies, allow an investor to receive a cash amount similar to proceeds of disposition, and transfer part or all of the economic risk and/or return associated with securities of an issuer, without actually transferring ownership of or control over such securities. (The term “monetization” generally refers to the conversion of an asset (such as securities) into cash.)

- (2) **What are the concerns with equity monetization transactions?** Where a reporting insider enters into a monetization transaction, and does not disclose the existence or material terms of that transaction, there is potential for harm to investors and the integrity of the insider reporting regime because:
 - an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer, may be able to profit improperly from such information by entering into derivative-based transactions that mimic trades in securities of the reporting issuer;
 - market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and
 - since the insider’s publicly reported holdings no longer reflect the insider’s true economic position in the issuer, the public reporting of such holdings (e.g., in an insider report or a proxy circular) may in fact materially mislead investors.

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

PART 5 AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Automatic Securities Purchase Plans

- (1) Section 5.1 of the Instrument contains an interpretation provision that applies to Part 5. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for both acquisitions and specified dispositions of securities and related financial instruments under an automatic securities purchase plan (ASPP).
- (2) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan or a lump-sum provision of a share purchase plan.
- (3) The exemption does not apply to an “automatic securities disposition plan” (sometimes referred to as a “pre-arranged structured sales plan”) (an ASDP) established between a reporting insider and a broker since an ASDP is designed to facilitate dispositions not acquisitions. However, if a reporting insider can demonstrate that an ASDP is genuinely an automatic plan and that the insider cannot make discrete investment decisions through the plan, we may consider granting exemptive relief on an application basis to permit the insider to file reports on an annual basis.
- (4) The exemption is not available for a grant of options or similar securities to reporting insiders, since, in many cases, the reporting insider will be able to make an investment decision in respect of the grant. If an insider is an executive officer or a director of the reporting issuer or a major subsidiary, the insider may be participating in the decision to grant the options or other securities. Even if the insider does not participate in the decision, we think information about options or similar securities granted to this group of insiders is important to the market and the insider should disclose this information in a timely manner.

5.2 Specified Dispositions of Securities

- (1) Subsection 5.1(3)(a) of the Instrument provides that a disposition or transfer of securities is a specified disposition if, among other things, it does not involve a “discrete investment decision” by the director or officer. The term “discrete investment decision” generally refers to the exercise of discretion involved in a specific decision to purchase, hold or sell a security. The purchase of a security as a result of the application of a pre-determined, mechanical formula does not generally represent a discrete investment decision (other than the initial decision

to enter into the plan). For example, for an individual who holds stock options in a reporting issuer, the decision to exercise the stock options will generally represent a discrete investment decision. If the individual is a reporting insider, we think the individual should report this information in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions.

- (2) The definition of “specified disposition of securities” contemplates, among other things, a disposition made to satisfy a tax withholding obligation arising from the acquisition of securities under an ASPP in certain circumstances. Under some types of ASPPs, an issuer or plan administrator may sell, on behalf of a plan participant, a portion of the securities that would otherwise be distributed to the plan participant in order to satisfy a tax withholding obligation. In such plans, the participant typically may elect either to provide the issuer or the plan administrator with a cheque to cover this liability or to direct the issuer or plan administrator to sell a sufficient number of the securities that would otherwise be distributed to cover this liability. In many cases, for reasons of convenience, a plan participant will simply direct the issuer or the plan administrator to sell a portion of the securities.

Although we think that the election as to how a tax withholding obligation will be funded contains an element of a discrete investment decision, we are satisfied that, where the election occurs sufficiently in advance of the actual distribution of securities, it is acceptable for a report of a disposition made to satisfy a tax withholding obligation to be made on an annual basis. Accordingly, a disposition made to satisfy a tax withholding obligation will be a specified disposition of securities if it meets the criteria contained in clause 5.1(3)(b) of the Instrument.

- 5.3 Alternative Reporting Requirements** – If securities acquired under an ASPP are disposed of or transferred, other than through a specified disposition of securities, and the insider has not previously disclosed the acquisition of these securities, the insider report should disclose, for each acquisition of securities which the insider is now disposing of or transferring, information about the date of acquisition of the securities, the number of securities acquired and the acquisition price of such securities. The report should also disclose, for each disposition or transfer, information about each disposition or transfer of securities.

- 5.4 Exemption from the Alternative Reporting Requirement** – The rationale underlying the alternative reporting requirement is to ensure that reporting insiders periodically update their publicly disclosed holdings to ensure that their publicly disclosed holdings convey an accurate picture of their holdings. If an

individual has ceased to be subject to the insider reporting requirements at the time the alternative report becomes due, the market generally would not benefit from the information in the alternative report. Accordingly, we provided an exemption in subsection 5.4(3) of the Instrument in these circumstances.

5.5 Design and Administration of Plans

- (1) Part 5 of the Instrument provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation in an ASPP, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a particular plan of an issuer, the issuer should design and administer the plan in a manner that is consistent with this limitation.
- (2) To fit within the definition of an ASPP, the plan must set out a written formula or criteria for establishing the timing of the acquisitions, the number of securities that the insider can acquire and the price payable. If a plan participant is able to exercise discretion in relation to these terms either in the capacity of a recipient of the securities or through participating in the decision-making process of the issuer making the grant, he or she may be able to make a discrete investment decision in respect of the grant or acquisition. We think a reporting insider in these circumstances should disclose information about the grant in accordance within the normal timeframe and not on a deferred basis.

PART 6 ISSUER GRANT REPORTS

6.1 Overview

- (1) Section 6.1 of the Instrument contains an interpretation provision that applies to Part 6. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for grants of securities and related financial instruments.
- (2) A reporting insider who intends to rely on the exemption in Part 6 for a grant of stock options or similar securities must first confirm that the issuer has made the public disclosure required by section 6.3 of the Instrument. If the issuer has not made the required disclosure, the reporting insider must report the grant in accordance with the normal reporting requirements under Part 3 of the Instrument.

6.2 Policy rationale for the issuer grant report exemption

- (1) The issuer grant report exemption reduces the regulatory burden associated with insider reporting of stock options and similar instruments since it allows an issuer to make a single filing on SEDAR. Since the market will have timely information about the existence and material terms of the grant, it is not necessary for each of the reporting insiders to file insider reports about the grant within the ordinary time periods.
- (2) The concept of an issuer grant report is generally similar to the concept of an issuer event report in that the decision to make the grant originates with the issuer. Accordingly, at the time of the grant, the issuer will generally be in a better position than the reporting insiders who are the recipients of the grant to communicate information about the grant to the market in a timely manner.
- (3) There is no obligation for an issuer to file an issuer grant report for a grant of stock options or similar instruments. An issuer may choose to assist its reporting insiders with their reporting obligations and also to communicate material information about its compensation practices to the market in a timely manner.
- (4) If an issuer chooses not to file an issuer grant report, the issuer should take all reasonable steps to notify reporting insiders of their grants in a timely manner to allow reporting insiders to comply with their reporting obligations.
- (5) The concept of an issuer grant report is different from the issuer event report that an issuer is required to make under Part 2 of NI 55-102 in that
 - (a) An issuer is not required to file an issuer grant report; and
 - (b) If an issuer chooses to file an issuer grant report, the issuer is required to file the report on SEDAR rather than on SEDI.

6.3 Form of an issuer grant report – There is no required form for an issuer grant report. An issuer may file a report in spreadsheet format or any other format that discloses the information required by section 6.3 of the Instrument.

PART 7 EXEMPTIONS FOR NORMAL COURSE ISSUER BIDS AND PUBLICLY DISCLOSED TRANSACTIONS

7.1 Introduction – Under securities legislation, a reporting issuer may become an insider of itself in certain circumstances and therefore subject to an insider

reporting requirement in relation to transactions involving its own securities. Under the definition of “insider” in securities legislation, a reporting issuer becomes an insider of itself if it “has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security”. In certain jurisdictions, a reporting issuer may also become an insider of itself if it acquires and holds securities of its own issue through an affiliate, because in certain jurisdictions a person is deemed to beneficially own securities beneficially owned by affiliates. Where a reporting issuer is an insider of itself, the reporting issuer will also be a reporting insider under the Instrument.

- 7.2 General exemption for transactions that have been generally disclosed –** Section 7.3 of the Instrument provides that the insider reporting requirement does not apply to an issuer in connection with a transaction, other than a normal course issuer bid, involving securities of its own issue if the existence and material terms of the transaction have been generally disclosed in a public filing made on SEDAR. Because of this exemption and the exemption for normal course issuer bids in section 7.1 of the Instrument, a reporting issuer that is an insider of itself will not generally need to file insider reports under Part 3 or Part 4.

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

- 8.1** [Intentionally left blank]

PART 9 EXEMPTIONS

- 9.1 Scope of exemptions –** The exemptions under the Instrument are only exemptions from the insider reporting requirements contained in the Instrument and are not exemptions from the provisions in Canadian securities legislation imposing liability for improper insider trading.
- 9.2 Reporting Exemption –** The definition of “reporting insider” includes certain enumerated persons or companies that generally satisfy the criteria contained in subsection (i) of the definition of reporting insider, namely, access to material undisclosed information and significant power or influence over the reporting issuer. Although there is no general exemption for holders of the enumerated persons or companies based on lack of access to material undisclosed information or lack of power or influence, we will consider applications for exemptive relief where the issuer or reporting insider can demonstrate that the reporting insider does not satisfy these criteria. This might include, for example, a situation where a foreign subsidiary may appoint a locally resident individual as a director to meet

residency requirements under applicable corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.

9.3 Reporting Exemption (certain directors and officers of insider issuers) – The reference to “material facts or material changes concerning the investment issuer” in section 9.3 of the Instrument is intended to include information that originates at the insider issuer level but which concerns or is otherwise relevant to the investment issuer. For example, in the case of an issuer that has a subsidiary investment issuer, a decision at the parent issuer level that the subsidiary investment issuer will commence or discontinue a line of business would generally represent a “material fact or material change concerning the investment issuer”. Similarly, a decision at the parent issuer level that the parent issuer will seek to sell its holding in the subsidiary investment issuer would also generally represent a “material fact or material change concerning the investment issuer.” Accordingly, a director or officer of the parent issuer who routinely had access to such information concerning the investment issuer would not be entitled to rely on the exemption for trades in securities of the investment issuer.

9.4 Exemption for a pledge where there is no limitation on recourse – The exemption in section 9.7(a) of the Instrument is limited to pledges of securities in which there is no limitation of recourse since a limitation on recourse may effectively allow the borrower to “put” the securities to the lender to satisfy the debt. The limitation on recourse may effectively represent a transfer of the risk that the securities may fall in value from the insider to the lender. In these circumstances, the transaction should be transparent to the market.

A loan secured by a pledge of securities may contain a term limiting recourse against the borrower to the pledged securities (a legal limitation on recourse). Similarly, a loan secured by a pledge of securities may be structured as a limited recourse loan if the loan is made to a limited liability entity (such as a holding corporation) owned or controlled by the insider (a structural limitation on recourse). If there is a limitation on recourse as against the insider either legally or structurally, the exemption would not be available.

9.5. Exemption for certain investment funds – The exemption in section 9.7(e) of the Instrument is limited to situations where securities of the reporting insider’s reporting issuer do not form a material component of the investment fund's market value. In determining materiality, similar considerations to those involved in the concepts of material fact and material change would apply.

PART 10 CONTRAVENTION OF INSIDER REPORTING REQUIREMENTS

10.1 Contravention of insider reporting requirements

- (1) 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 insider report that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.
- (2) A failure to file an insider report in a timely manner or the filing of an insider report that contains information that is materially misleading may result in one or more of the following:
 - the imposition of a late filing fee;
 - the reporting insider being identified as a late filer on a public database of late filers maintained by certain securities regulators;
 - in the case of financial years ending on or after December 31, 2010, the reporting insider being identified as a late filer in the reporting insider's annual information circular;
 - the issuance of a cease trade order that prohibits the reporting insider from trading in securities of the applicable reporting issuer, whether direct or indirect, until the failure to file is corrected; or
 - in appropriate circumstances, enforcement proceedings.
- (3) A reporting issuer that files an information circular on or after • must describe any late filing fees relating to the late filing of insider reports imposed by a securities regulatory authority against any director or executive officer of the issuer during the most recently completed financial year. This requirement is located in Item 17 of Form 51-102F5 *Information Circular*. Information relating to non-compliance by directors and executive officers with their insider reporting requirements may be relevant to an investor's voting decision and should be disclosed. This requirement may also create additional incentives for issuers to assist their directors and executive officers in complying with their insider reporting obligations.

PART 11 INSIDER TRADING

- 11.1 Non-reporting insiders** – Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.
- 11.2 Written disclosure policies** – National Policy 51-201 *Disclosure Standards* outlines detailed best practices for issuers for disclosure and information containment and provides interpretative guidance of insider trading laws. Issuers should adopt written disclosure policies to assist directors, officers, employees and other representatives in discharging timely disclosure obligations. Written disclosure policies also should provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading on inside information. Adopting the CSA best practices may assist issuers to take all reasonable steps to contain inside information.
- 11.3 Insider Lists** – Reporting issuers may also wish to consider preparing and periodically updating a list of the persons working for them or their affiliates who have access to material facts or material changes concerning the reporting issuer before those facts or changes are generally disclosed. This type of list may allow reporting issuers to control the flow of undisclosed information. The CSA may request additional information from time to time, including asking the reporting issuer to prepare and provide a list of insiders, in the context of an insider reporting review.