

**NATIONAL INSTRUMENT 62-103
THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND
INSIDER REPORTING ISSUES**

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PART 1 DEFINITIONS AND INTERPRETATION²

1.1 Definitions

(1) In this Instrument

"acquisition announcement provisions" means the requirement in securities legislation³ for an offeror to issue a news release if, during a formal bid for voting or equity securities of a reporting issuer by a person or company other than the offeror, the offeror acquires ownership of, or control over, securities of the class subject to the bid that, together with the offeror's securities of the class, constitute an amount equal to or greater than the amount specified in securities legislation;⁴

"acting jointly or in concert" has the meaning ascribed to that phrase in securities legislation;

"applicable definitions" means

¹ This National Instrument is expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia, as a Commission regulation in Saskatchewan, and as a policy in all other jurisdictions represented by the Canadian Securities Administrators.

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

³ The term "securities legislation" is defined in National Instrument 14-101 Definitions as meaning the particular statute and other instruments of the local jurisdiction set out in an appendix to that instrument and will generally include the statute, regulations and, in some cases, the rules, forms, rulings and orders relating to securities in the local jurisdiction.

⁴ This definition includes section 142 of the Alberta Act, section 112 of the B.C. Act, section 103 of the Newfoundland Act, section 108 of the Nova Scotia Act, section 102 of the Ontario Act, and section 111 of the Saskatchewan Act.

(a) the definitions of "take-over bid"⁵ and "offeror's securities" in the take-over provisions, and

(b) the control block distribution definition;

"applicable provisions" means

(c) the early warning requirements,

(d) Part 4,

(e) the moratorium provisions,

(f) the insider reporting requirement,⁶

(g) subsection 9.1(4), and

(h) subsection 2.1(2) of National Instrument 62-101 Control Block Distribution Issues;⁷

"business unit" means a legal entity or part of a legal entity, or a combination of legal entities or parts of legal entities, that engage in a distinct business or investment activity separately from other businesses and investment activities of the relevant entities;

"class" means, in relation to a security, a class or series of a class of the security;

⁵ The term "take-over bid" is proposed to be defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation.

⁶ The term "insider reporting requirement" is proposed to be defined in National Instrument 14-101 Definitions as "the requirement in securities legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer".

⁷ This definition, together with the definition of "applicable definitions", lists the provisions of securities legislation for which relief is provided under Part 5 (aggregation relief) and Part 8 (relief for pledgees) under this Instrument.

"control" means, in relation to a security, the right to exercise control or direction over the security, and "controls", "controlled" and similar words have corresponding meanings;

"control block distribution definition" means the provisions of securities legislation listed in Appendix A;

"early warning requirements" means the provisions of securities legislation listed in Appendix B;

"effective control" means, for a reporting issuer, the control in fact of the reporting issuer by a person or company through the ownership of, or control over, voting securities of the reporting issuer, other than securities held by way of security only;⁸

"eligible institutional investor" means

- (a) a financial institution,
- (b) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada), a pension commission of a jurisdiction⁹, or similar regulatory authority,
- (c) a mutual fund that is not a reporting issuer,
- (d) an investment manager exercising full discretionary authority over securities, subject to general investment policies, guidelines, objectives or restrictions and to legal requirements, or

⁸ The concept of "effective control" is analogous to the concept of "control in fact" contained in clause 3(1)(d) of the *Bank Act* (Canada), although the Bank Act definition relates to influence other than through securities. Although undefined, the concept of effective control is also provided for in s. 190(4)3.iii of the *Business Corporations Act* (Ontario). The definition is used in this Instrument as part of the test for eligibility to use the alternative monthly reporting system contained in Part 4 of this Instrument.

⁹ The term "jurisdiction" is defined in National Instrument 14-101 Definitions as meaning "a province or territory of Canada except when used in the term foreign jurisdiction".

- (e) a person or company referred to in clauses (D) or (F) of Rule 13d-1(b)(1)(ii) under the 1934 Act;¹⁰

"equity security" has the meaning ascribed to that term in securities legislation;

"financial institution" means

- (a) a Canadian financial institution,¹¹
- (b) a bank or insurance company referred to in clauses (B) or (C) of Rule 13d-1(b)(1)(ii) under the 1934 Act, or
- (c) an entity engaged in financial services activities that is supervised and regulated under the banking, insurance, trust or similar laws of the United Kingdom of Great Britain and Northern Ireland;

"formal bid" has the meaning ascribed to that term in securities legislation;

"investment manager" means a person or company that

- (a) is registered or licensed to provide investment counselling, portfolio management or similar advisory services in respect of securities, or is exempt from the requirement to be so registered or licensed, under the securities laws of a jurisdiction, the Investment Advisers Act of 1940 of the United States of America, as amended, or the Financial

¹⁰ The term "1934 Act" is defined in the National Instrument 14-101 Definitions as "the *Securities Exchange Act of 1934* of the United States of America". The references to Rule 13d-1 include U.S. registered investment companies and to pension funds subject to ERISA. U.S. banks and insurance companies are included within the definition of "financial institution", and an "investment manager" would include a registered investment adviser in the U.S., among other persons and companies.

¹¹ The term "Canadian financial institution" is defined in the National Instrument 14-101 Definitions as "a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire that, in each case, is authorized to carry on business in Canada or a jurisdiction, or the Confédération des caisses populaires et d'économie Desjardins du Québec".

Services Act, 1986 of the United Kingdom of Great Britain and Northern Ireland, as amended, and

- (b) provides the services referred to in paragraph (a) for valuable consideration under a contractual arrangement;

"joint actor" means, in relation to a person or company and a security, another person or company acting jointly or in concert with the person or company in connection with the ownership of, or control over, the security;

"moratorium provisions" means the provisions of securities legislation listed in Appendix C;

"news release" includes a press release;

"offeror" and "offeror's securities" have the respective meanings ascribed to those terms in securities legislation;

"ownership" means, in relation to a security, the beneficial ownership of the security, and "owns", "owned" and similar words have corresponding meanings;

"pledgee" includes a holder of any type of security interest;

"portfolio adviser" means a person or company that provides investment advice or portfolio management services to, or for, an investment fund;

"securityholding percentage" means, in relation to a person or company and a class of securities, the percentage of the outstanding securities of the class owned or controlled by the person or company, determined in accordance with the provisions of securities legislation listed in Appendix D;¹²

¹² The provisions of securities legislation listed in the Appendix operate to ensure that a "securityholding percentage" of a person or company includes securities owned or controlled by a joint actor with the person or company, and assuming that all securities convertible into or exercisable or exchangeable for securities of the class that are owned or controlled by the person or company or the joint actor have been converted, exercised or exchanged. They also provide that a person is deemed to own beneficially securities beneficially owned by a company controlled by the person or an affiliate of that company, and that a company is deemed to own beneficially securities beneficially owned by its affiliates.

"take-over provisions" means the provisions in securities legislation that regulate take-over bids¹³ and issuer bids;¹⁴ and

"underwriting period" means, for a person or company acting as an underwriter of securities, the period commencing from the date of execution of an underwriting agreement or commitment until the earlier of

- (a) the expiration of 40 days after the date of the closing of the purchase of the securities, and
- (b) the date of the completion of the distribution by the underwriter of the securities.

1.2 Deemed Effective Control - For the purposes of the definition of "effective control", a person or company that, either alone or together with one or more joint actors, owns or controls voting securities carrying more than 30 percent of the votes attached to all of the outstanding voting securities of a reporting issuer shall, in the absence of evidence to the contrary, be deemed to possess effective control over the reporting issuer.¹⁵

The effect of this definition is that the method of calculating ownership of a class of securities for purposes of the take-over bid provisions of securities legislation are imported into this Instrument for purposes of the alternative monthly reporting system and other relief provided by this Instrument.

¹³ This definition includes sections 135 to 140 of the Alberta Act, sections 105 to 110 of the B.C. Act, sections 96 to 101 of the Newfoundland Act, sections 101 to 106 of the Nova Scotia Act, sections 95 to 100 of the Ontario Act, and sections 104 to 109 of the Saskatchewan Act.

¹⁴ The term "issuer bid" is proposed to be defined in National Instrument 14-101 Definitions having the meaning ascribed to that term in securities legislation.

¹⁵ This provision creates a rebuttable presumption of effective control at the 30 percent level, based on votes (not voting securities) and is used to described the conditions for access to the alternative monthly reporting system contained in Part 4 and to the relief from the insider reporting requirements provided by Part 9.

PART 2 GENERAL RELIANCE AND REPORTING PROVISIONS

2.1 Reliance on Reported Outstanding Shares¹⁶

- (1) Subject to subsection (2), in determining its securityholding percentage in a class of securities for the purposes of the early warning requirements or Part 4, a person or company may rely upon information most recently provided by the issuer of the securities in a material change report or under section 2.1 of National Instrument 62-102 Disclosure of Outstanding Share Data, whichever contains the most recent relevant information.
- (2) Subsection (1) does not apply if the person or company has knowledge both
 - (a) that the information filed is inaccurate or has changed; and
 - (b) of the correct information.

2.2 Copies of News Release and Report - A person or company that files a news release and report under the early warning requirements, or a report under Part 4, in relation to a reporting issuer shall immediately send a copy of each filing to the reporting issuer.

2.3 No Duplication of News Releases or Reports

- (1) A person or company that is required to issue a news release under both the early warning requirements and the acquisition announcement provisions is exempt from the requirement to issue the news release contained in the provision requiring the later release if
 - (a) the news release is filed under the provision with the earlier reporting requirement; and
 - (b) the facts required to be contained in the two news releases are identical.
- (2) A person or company that is required to file a report under the acquisition announcement provisions and either the early warning

¹⁶ The requirements for issuers to provide outstanding share information are contained in National Instrument 61-102 Disclosure of Outstanding Share Data.

requirements or Part 4 is exempt from the requirement to file the report under the provision requiring the later report if

- (a) the report is filed under the provision requiring the earlier report; and
- (b) the facts required to be contained in the two reports are identical.¹⁷

PART 3 REPORTING REQUIREMENTS UNDER THE EARLY WARNING REQUIREMENTS

3.1 Contents of News Releases and Reports

- (1) A news release required under the early warning requirements shall contain the information required by Appendix E.
- (2) Despite subsection (1), a news release required under the early warning requirements may omit the information otherwise required by paragraphs 1(d), (g), (h) and (i) of Appendix E, and paragraph (j) of Appendix E to the extent that the information relates to paragraphs 1(d), (g), (h) and (i), if
 - (a) the omitted information is included in the corresponding report required by securities legislation; and
 - (b) the news release indicates the name and telephone number of an individual to contact in order to obtain a copy of the report.
- (3) The offeror shall send a copy of the report referred to in paragraph (2)(a) promptly to any person or company requesting it.

3.2 Filing Relief for Joint Actors - The early warning requirements and the acquisition announcement provisions do not apply to a joint actor of an offeror in connection with the obligation to make a specific filing of a news release or report if

¹⁷ This provision is analogous to provisions now contained in the securities legislation of a number of jurisdictions that are designed to eliminate duplicative filings for the early warning requirements and the acquisition announcement provisions. This provision adds a reference to filings under Part 4 of this Instrument.

- (a) the offeror files a news release or report at the time that the joint actor would be required to file; and
- (b) the news release or report filed discloses the information concerning the joint actor required by securities legislation.

PART 4 ALTERNATIVE MONTHLY REPORTING SYSTEM

4.1 Exemption from the Early Warning Requirements - The early warning requirements do not apply to an eligible institutional investor for a reporting issuer if the eligible institutional investor

- (a) is not disqualified by section 4.2 from filing reports under this Part for the reporting issuer; and
- (b) either
 - (i) intends to file reports under this Part for the reporting issuer, if no reports are yet required to be filed; or
 - (ii) is not in arrears of filing reports under this Part for the reporting issuer, if a report has been required by this Part to be filed.

4.2 Disqualification - An eligible institutional investor shall not file reports under this Part for a reporting issuer if the eligible institutional investor, or a joint actor

- (a) makes or intends to make a formal bid for securities of the reporting issuer; or
- (b) proposes or intends to propose a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer that if completed would reasonably be expected to result in the eligible institutional investor, either alone or together with any joint actors, possessing effective control over the reporting issuer or a successor to all or a part of the business of the reporting issuer.

4.3 Reporting and Filing Requirements

- (1) If an eligible institutional investor is relying on the exemption in section 4.1 for a reporting issuer and becomes disqualified under section 4.2 from filing, or no longer intends to file, reports under this Part for the reporting issuer, the eligible institutional investor shall
 - (a) immediately issue and file a news release; and
 - (b) within three days after filing the news release, file a report.
- (2) The news release and report required by subsection (1) shall contain the information required by Appendix F.
- (3) An eligible institutional investor that is required to file a report under subsection (1) for a reporting issuer is not exempt from the early warning requirements for that reporting issuer as of the date on which the news release required by subsection (1) is required to be filed.
- (4) An eligible institutional investor that files reports under this Part for a reporting issuer and that controls securities of the reporting issuer that are owned by another person or company shall
 - (a) on request by the person or company, promptly advise the person or company of the number of securities held on its behalf; and
 - (b) if the eligible institutional investor has reason to believe that the securityholding percentage of the person or company in a class of voting or equity securities of the reporting issuer equals 10 percent or more, promptly advise the person or company of the number of securities held on its behalf.

- 4.4 Restrictions on Acquisitions** - A person or company that has become disqualified under section 4.2 from filing reports under this Part for a reporting issuer shall not acquire ownership of, or control over, any additional securities of the reporting issuer for the period

- (a) starting at the time that the news release referred to in paragraph 4.3(1)(a) is required to be filed; and
- (b) ending 10 days after the news release is filed.¹⁸

4.5 Filing Obligations under this Part - In order to rely on the exemption provided by section 4.1, an eligible institutional investor shall file a report

- (a) within 10 days after the end of the month in which the eligible institutional investor elected to begin to file reports for the reporting issuer under this Part, if the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer at the end of the month is 10 percent or more;
- (b) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer, as at the end of the month, increased to 10 percent or more;
- (c) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer, as at the end of the month, increased or decreased past thresholds represented by whole number multiples of 2.5 percent of the outstanding securities of the class in excess of 10 percent of the outstanding securities of the class; and
- (d) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer, as at the end of the month, decreased to less than 10 percent.

4.6 Change Reports - In addition to the filing requirements of section 4.5, an eligible institutional investor shall file a report within 10 days after the

¹⁸ This moratorium is similar to and based on the moratorium provided by Rule 13d-1(b)(3)(ii) under the U.S. Securities Exchange Act of 1934. The voting of the shares held has not been proscribed, however. This moratorium is supplemented in some jurisdictions by the provisions of securities legislation that prohibit offerors from selling securities during a take-over bid except pursuant to the bid.

end of the month in which there has been a change in a material fact contained in the report of the eligible institutional investor most recently filed under this Part.

4.7 Contents of Reports

- (1) A report filed under this Part shall contain the information required by Appendix G.
- (2) Despite subsection (1), a report filed under paragraph 4.5(d) may be limited to
 - (a) the name and address of the eligible institutional investor;
 - (b) the designation and number or principal amount of voting or equity securities of the reporting issuer in respect of which the report is being filed and the securityholding percentage of the eligible institutional investor in the class of securities; and
 - (c) a statement that the eligible institutional investor is eligible to file reports under this Part.

4.8 Exemptions - The requirement to file a report under this Part does not apply to a joint actor with a person or company in connection with a specific filing if

- (a) the person or company files a report under this Part at the time that the joint actor is required to file; and
- (b) the report discloses the information concerning the joint actor required by this Instrument.

PART 5 AGGREGATION RELIEF

5.1 Separate Business Units - An eligible institutional investor, or an affiliate or associate of an eligible institutional investor, that conducts business or investment activities through business units may, for the purposes of the applicable provisions and applicable definitions, treat

securities that are owned or controlled through a business unit separately from securities owned or controlled through any other of its business units if

- (a) decisions on the acquisition, disposition, holding and voting of the securities owned or controlled by a business unit are made in all circumstances by that business unit;
- (b) the business unit is not a joint actor with any other business unit with respect to the securities, determined without regard to the presumption in securities legislation that an associate or affiliate of an offeror is presumed to be acting jointly or in concert with the offeror;
- (c) no business unit, person or company, that makes, advises on, participates in the formulation of or exercises influence over, decisions for the acquisition, disposition, holding or voting of securities of specific reporting issuers for, by or on behalf of a business unit also makes, advises on, participates in the formulation of or exercises influence over, decisions with respect to the acquisition, disposition, holding or voting of securities of specific reporting issuers for, by or on behalf of any other business unit, except for the purposes of preparing research reports or monitoring or ensuring compliance with regulatory requirements or general investment policies, guidelines, objectives or restrictions;
- (d) the eligible institutional investor or affiliate or associate has reasonable grounds for believing that each business unit complies with the applicable provisions and securities legislation related to the applicable definitions in connection with the securities that the business unit owns or controls;
- (e) the eligible institutional investor or affiliate or associate has taken reasonable steps to ensure that each business unit complies with the requirements of this Part; and
- (f) the eligible institutional investor or affiliate or associate complies with section 5.3.

5.2 Securities Held by an Investment Fund - An eligible institutional investor, or an affiliate or associate of an eligible institutional investor,

may, for the purposes of the applicable provisions and applicable definitions, treat securities owned or controlled by an investment fund over which the eligible institutional investor, affiliate or associate exercises or shares control, or securities into which those securities are convertible, exercisable or exchangeable, separately from other securities owned or controlled by the eligible institutional investor or affiliate or associate if

- (a) the investment fund is not a private mutual fund;
- (b) a portfolio adviser manages the investment fund on behalf of the eligible institutional investor under a written agreement;
- (c) the portfolio adviser has been identified as managing the investment fund in a prospectus, or in offering materials used in the private placement of securities, of the investment fund;
- (d) none of the eligible institutional investor, its affiliates or associates, or a director, officer, partner, employee or agent of the eligible institutional investor or its affiliates or associates, makes, advises on, participates in the formulation of, or exercises influence over, decisions with respect to the acquisition, disposition, holding or voting of securities of specific reporting issuers made by the portfolio adviser, except for the purposes of preparing research reports or monitoring or ensuring compliance with regulatory requirements or general investment policies, guidelines, objectives or restrictions;
- (e) the eligible institutional investor or affiliate or associate has reasonable grounds for believing that those securities are included by the portfolio adviser in its compliance with the applicable provisions and applicable definitions;
- (f) the portfolio adviser neither controls nor is controlled by the eligible institutional investor or an affiliate or associate of the eligible institutional investor; and
- (g) the eligible institutional investor or affiliate or associate complies with section 5.3.

5.3 Reporting and Record Keeping

- (1) In addition to the requirements of sections 5.1 and 5.2, in order to rely on section 5.1 or 5.2, an eligible institutional investor or an affiliate or associate shall indicate in any document released or filed under the applicable provisions or as the result of the application of the applicable definitions
 - (a) its reliance on either section 5.1 or 5.2;
 - (b) the identity of the business units or investment funds for which ownership and control of the securities has been disclosed; and
 - (c) the fact that securities owned or controlled by other business units or investment funds have not been, or may not have been, disclosed.
- (2) An eligible institutional investor or affiliate or associate shall maintain records of the details concerning
 - (a) business units of the person or company that are treated separately, by reason of section 5.1, for the purposes of compliance with the applicable provisions and applicable definitions; and
 - (b) investment funds whose ownership of, or control over, securities are treated separately, by reason of section 5.2, for the purposes of compliance with the applicable provisions and securities legislation related to the applicable definitions.

5.4 No Requirement to Satisfy Insider Reporting Requirement - If an eligible institutional investor is relying on this Part so that it is not required to satisfy the insider reporting requirement for a reporting issuer, then every director or senior officer of the eligible institutional investor who is an insider of the reporting issuer solely as a result of being a director or senior officer of the eligible institutional investor is not required to satisfy the insider reporting requirement for the reporting issuer.

PART 6 ISSUER ACTIONS

6.1 Issuer Actions

- (1) A person or company is exempt from the early warning requirements and the obligation to report under Part 4 with respect to an increase in the securityholding percentage of the person or company in a class of securities of a reporting issuer that arises without any action being taken by the person or company and solely from a reduction in outstanding securities that occurs as a result of redemptions, retractions or other repurchases by the reporting issuer, that affect or are offered to all securityholders of the relevant class.
- (2) A person or company is exempt from the early warning requirements with respect to a decrease in the securityholding percentage of the person or company in a class of securities of a reporting issuer that arises without any action being taken by the person or company and solely from an increase in outstanding securities that occurs as a result of treasury issuances of securities by the reporting issuer.
- (3) A person or company may rely upon an exemption provided by this section with respect to a class of securities only until the person or company undertakes any transaction that changes the securityholding percentage of the person or company in that class of securities.
- (4) A person or company that undertakes a transaction described in subsection (3) shall comply with the early warning requirements or Part 4 in respect of the class of securities referred to in that subsection in a manner that reflects the changes in the securityholding percentage of the person or company in that class of securities since the last news release or report made or filed under the early warning requirements or Part 4.

PART 7 UNDERWRITING EXEMPTION

7.1 Underwriting Exemption - A person or company is exempt from the early warning requirements and the obligation to report under Part 4 in respect of securities owned by the person or company in its capacity as underwriter, during the underwriting period, if

- (a) the person or company is engaged in the business of an underwriter of securities; and
- (b) the person or company has issued and filed a news release that
 - (i) announces the proposed underwriting, and
 - (ii) identifies the reporting issuer and the designation and number or principal amount of the securities underwritten.

PART 8 RELIEF FOR PLEDGEEES

8.1 Relief for Pledgrees

- (1) For securities that are controlled by a financial institution as a pledgee, and any securities into which those securities are convertible, exercisable or exchangeable, in either case that are pledged, mortgaged or otherwise encumbered as collateral for a debt under a written pledge agreement and in the ordinary course of the financial institution's business, the financial institution is exempt from the applicable provisions, and those securities are not required to be taken into account for the purposes of the applicable definitions.
- (2) Subsection (1) does not apply if the financial institution is legally entitled to dispose of the securities as pledgee for the purpose of applying proceeds of realization in repayment of the secured debt.¹⁹

¹⁹ The phrase "legally entitled to dispose" is designed to indicate that the pledgee has satisfied all requirements under both the pledge agreement and relevant statutory provisions to permit it to sell.

8.2 Further Relief for de minimis Pledges - For securities that are controlled by a financial institution as a pledgee, and any securities into which those securities are convertible, exercisable or exchangeable, in either case that are pledged, mortgaged or otherwise encumbered as collateral for a debt, under a written pledge agreement and in the ordinary course of the business of the financial institution, the financial institution is exempt from the applicable provisions, and those securities are not required to be taken into account for the purposes of the applicable definitions, if

- (a) the principal amount of the debt, together with the principal amount of all other debts of or guaranteed by the same borrower to the financial institution, does not exceed \$2,000,000;
- (b) the pledged securities are not voting or equity securities; and
- (c) the pledged securities, and securities into which the pledged securities are convertible, exercisable or exchangeable, do not constitute 10 percent or more of a class of voting or equity securities.

8.3 Corresponding Insider Reporting Relief - If a financial institution is exempt under section 8.1 or 8.2 from the insider reporting requirement for those securities of a reporting issuer that it controls as pledgee, every director or senior officer of the financial institution who is an insider of the reporting issuer solely as a result of being a director or senior officer of the financial institution that is an insider of the reporting issuer is exempt from the insider reporting requirement for those securities.²⁰

²⁰ This provision is designed to ensure that, where a financial institution is exempt from the insider reporting requirement by virtue of the relief for pledgees provided by sections 8.1 and 8.2, its directors and senior officers are similarly exempt.

**PART 9 INSIDER REPORTING EXEMPTION; EARLY WARNING
DECREASE REPORTS**

9.1 Insider Reporting Exemption; Early Warning Decrease Reports

- (1) Subject to subsections (3) and (4), an eligible institutional investor is exempt from the insider reporting requirement for a reporting issuer if
 - (a) the eligible institutional investor has issued and filed the news releases and filed reports under the early warning requirements or Part 4 for the reporting issuer reflecting the current securityholding percentage of the eligible institutional investor in the classes of voting and equity securities of the reporting issuer;
 - (b) the eligible institutional investor is not disqualified under section 4.2 from filing reports under Part 4;
 - (c) the eligible institutional investor does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed;²¹
 - (d) the eligible institutional investor does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed;
 - (e) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor; and

²¹ This provision has been amended from the 1995 Rule to delete the explicit reference to future-oriented financial information.

- (f) the eligible institutional investor, either alone or together with any joint actors, does not possess effective control²² of the reporting issuer.
- (2) An eligible institutional investor relying on the exemption in subsection (1) shall maintain records that include the information that, absent this section, would have been required to be included in a report filed under the insider reporting requirement.
- (3) Despite subsection (1), an eligible institutional investor that is filing reports under the early warning requirements for a reporting issuer, and whose securityholding percentage in a class of voting or equity securities of the reporting issuer decreases by two percent or more, may rely upon the exemption contained in subsection (1) for the reporting issuer only if
 - (a) the eligible institutional investor treats the decrease as a change in a material fact for the purposes of securities legislation pertaining to the early warning requirements; or
 - (b) the decrease arose without any action being taken by the eligible institutional investor and solely from an increase in outstanding securities that occurred as a result of treasury issuances of securities by the reporting issuer, and the eligible institutional investor has not undertaken any transaction in respect of the class of securities since the decrease.
- (4) Despite subsection (1), an eligible institutional investor that is an insider of a reporting issuer may not rely upon the exemption contained in subsection (1) if
 - (a) the eligible institutional investor, either alone or with a joint actor or joint actors, purchased in the previous month, directly or indirectly, 50 percent or more of all of the securities of a class that were reported sold on stock exchanges or over-the-counter markets in the previous month; or

²²

This provision has been amended from the 1995 rule to provide for a de facto control standard.

- (b) the eligible institutional investor, either alone or with a joint actor or joint actors, sold in the previous month, directly or indirectly, 50 percent or more of all of the securities of a class that were reported sold on stock exchanges or over-the-counter markets in the previous month.
- (5) If an eligible institutional investor is exempt under subsection (1) from the insider reporting requirement for a reporting issuer, every director or senior officer of the eligible institutional investor who is an insider of the reporting issuer solely as a result of being director or senior officer of the eligible institutional investor is exempt from the insider reporting requirement for the reporting issuer.²³

PART 10 MORATORIUM RELIEF

10.1 Moratorium Relief

- (1) A person or company is exempt from the moratorium provisions in respect of the acquisition of, or offers to acquire, securities, if those acquisitions or offers are made by an investment manager acting on behalf of the person or company without the direction or prior knowledge of the person or company.
- (2) Subsection (1) does not apply to an investment manager.
- (3) A person or company is exempt from the moratorium provisions in respect of any acquisitions of, or offers to acquire, securities made solely in its capacity as an approved specialist, or market maker, recognized by a stock exchange or an over-the-counter market that represents a published market for the securities.

²³ This provision is designed to provide directors and officers of an insider qualifying for insider reporting relief with equivalent treatment.

PART 11 EXEMPTIONS

11.1 Exemptions

- (1) The regulator²⁴ or the securities regulatory authority²⁵ may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

²⁴ The term "regulator" is defined in National Instrument 14-101 Definitions as meaning, in a local jurisdiction, the person set out in an appendix to that instrument opposite the name of the local jurisdiction.

²⁵ The term "securities regulatory authority" is defined in National Instrument 14-101 Definitions as meaning, in a local jurisdiction, the securities commission or similar regulatory authority set out in an appendix to that instrument opposite the name of the local jurisdiction.

NATIONAL INSTRUMENT 62-103
APPENDIX A
CONTROL BLOCK DISTRIBUTION DEFINITION

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Clause 1(f)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (British Columbia)
MANITOBA	Paragraph 1(b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Paragraph (b) of the definition of "primary distribution to the public" contained in section 1 of the <i>Security Frauds Prevention Act</i> (New Brunswick)
NEWFOUNDLAND	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland)
NOVA SCOTIA	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Clause 1(b.1)(iii) of the <i>Securities Act</i> (Prince Edward Island)
SASKATCHEWAN	Subclause 2(1)(r)(iii) of <i>The Securities Act, 1988</i> (Saskatchewan)

NATIONAL INSTRUMENT 62-103
APPENDIX B
EARLY WARNING REQUIREMENTS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Subsections 141(1), 141(2), and 141(3) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Subsections 111(1) and 111(2) of the <i>Securities Act</i> (British Columbia)
MANITOBA	Subsections 92(1) and 92(2) of the <i>Securities Act</i> (Manitoba)
NEWFOUNDLAND	Subsections 102(1) and 102(2) of the <i>Securities Act</i> (Newfoundland)
NOVA SCOTIA	Subsections 107(1) and 107(2) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Subsections 101(1) and 101(2) of the <i>Securities Act</i> (Ontario)
QUEBEC	Sections 147.11 and 147.12 of the <i>Securities Act</i> (Quebec)
SASKATCHEWAN	Subsections 110(1) and 110(2) of <i>The Securities Act, 1988</i> (Saskatchewan)

**NATIONAL INSTRUMENT 62-103
APPENDIX C
MORATORIUM PROVISIONS**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Subsection 141(4) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Subsection 111(3) of the <i>Securities Act</i> (British Columbia)
MANITOBA	Subsection 92(3) of the <i>Securities Act</i> (Manitoba)
NEWFOUNDLAND	Subsection 102(3) of the <i>Securities Act</i> (Newfoundland)
NOVA SCOTIA	Subsection 107(3) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Subsection 101(3) of the <i>Securities Act</i> (Ontario)
QUEBEC	Section 147.14 of the <i>Securities Act</i> (Quebec)
SASKATCHEWAN	Subsection 110(3) of <i>The Securities Act, 1988</i> (Saskatchewan)

NATIONAL INSTRUMENT 62-103
APPENDIX D
SECURITY OWNERSHIP AND CONTROL PROVISIONS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Sections 5 and 6, subsections 131(4), 131(5) and 131(6), and section 131.1 of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Subsection 1(4) and sections 95 and 96 of the <i>Securities Act</i> (British Columbia)
MANITOBA	Subsections 1(6) and 1(7) and sections 81 and 82 of the <i>Securities Act</i> (Manitoba)
NEWFOUNDLAND	Subsections 2(5) and 2(6) and sections 91 and 92 of the <i>Securities Act</i> (Newfoundland)
NOVA SCOTIA	Subsections 2(5) and 2(6) and sections 96 and 97 of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Subsections 1(5) and 1(6) and sections 90 and 91 of the <i>Securities Act</i> (Ontario)
QUEBEC	Sections 111 and 112 of the <i>Securities Act</i> (Quebec)
SASKATCHEWAN	Subsections 2(5) and 2(6) and sections 99 and 100 of <i>The Securities Act, 1988</i> (Saskatchewan)

APPENDIX E
REQUIRED DISCLOSURE

**REQUIRED DISCLOSURE IN NEWS RELEASE FILED UNDER EARLY
WARNING REQUIREMENTS**

1. For each class of securities involved in a transaction or occurrence giving rise to an obligation to file a news release under the early warning requirements and, if applicable, for each class of voting or equity securities into which the securities of the class are convertible, exercisable or exchangeable, the news release shall include:
 - (a) the name and address of the offeror;
 - (b) the designation and number or principal amount of securities and the offeror's securityholding percentage in the class of securities of which the offeror acquired ownership or control in the transaction or occurrence giving rise to the obligation to file the news release, and whether it was ownership or control that was acquired in those circumstances;
 - (c) the designation and number or principal amount of securities and the offeror's securityholding percentage in the class of securities immediately after the transaction or occurrence giving rise to obligation to file the news release;
 - (d) the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities referred to in paragraph (c) over which
 - (i) the offeror, either alone or together with any joint actors, has ownership and control,
 - (ii) the offeror, either alone or together with any joint actors, has ownership but control is held by other persons or companies other than the offeror or any joint actor, and
 - (iii) the offeror, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;

- (e) the name of the market in which the transaction or occurrence that gave rise to the news release took place;²⁶
- (f) the purpose of the offeror and any joint actors in effecting the transaction or occurrence that gave rise to the news release, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer;
- (g) the general nature and the material terms of any agreement, other than lending arrangements²⁷, with respect to securities of the reporting issuer entered into by the offeror, or any joint actor, and the issuer of the securities or any other person or company in connection with the transaction or occurrence giving rise to the news release, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;
- (h) the names of any joint actors in connection with the disclosure required by this Appendix;
- (i) in the case of a transaction or occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, the nature and value of the consideration paid by the offeror; and
- (j) if applicable, a description of any change in any material fact set out in a previous report by the person or company under the early warning requirements or Part 4 in respect of the reporting issuer's securities.

2. Despite paragraph (1)(b), an offeror may omit the securityholding percentage from a news release if it is included in the corresponding report filed under the early warning requirements and the change in percentage would represent less than 1 percent of the class.²⁸

²⁶ The former requirement for information concerning security interests has been deleted to protect the confidentiality of lending relationships.

²⁷ This provision has been revised to protect the confidentiality of lending relationships.

²⁸ This provision enables omission of percentage information in cases of minor acquisitions, such as pursuant to a normal course purchase programme.

3. A news release may also include
 - (a) information in addition to that required by this Instrument; and
 - (b) a declaration that the issuance of the news release is not an admission that a person or company named in the news release owns or controls any described securities or is a joint actor with another named person or company.

**APPENDIX F
REQUIRED DISCLOSURE**

**REQUIRED DISCLOSURE IN NEWS RELEASE AND REPORT FILED BY AN
ELIGIBLE INSTITUTIONAL INVESTOR UNDER SECTION 4.3**

1. For each class of securities involved in an occurrence giving rise to an obligation to file a news release under section 4.3 and, if applicable, for each class of voting or equity securities into which the securities of the class are convertible, exercisable or exchangeable, the news release shall include:
 - (a) a statement that the eligible institutional investor is ceasing to file reports under Part 4 for the reporting issuer;
 - (b) the reasons for doing so;
 - (c) the name and address of the eligible institutional investor;
 - (d) the designation and number or principal amount of securities and the eligible institutional investor's securityholding percentage in the class of securities immediately after the occurrence giving rise to obligation to file the news release;
 - (e) the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities referred to in paragraph (d) over which
 - (i) the eligible institutional investor, either alone or together with any joint actors, has ownership and control,
 - (ii) the eligible institutional investor, either alone or together with any joint actors, has ownership but control is held by other persons or companies other than the eligible institutional investor or any joint actor, and
 - (iii) the eligible institutional investor, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;
 - (f) the purpose of the eligible institutional investor and any joint actors in effecting the occurrence that gave rise to the news

release, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer;

- (g) the general nature and the material terms of any agreement, other than lending arrangements, with respect to securities of the reporting issuer entered into by the eligible institutional investor, or any joint actor, and the issuer of the securities or any other person or company in connection with the occurrence giving rise to the news release, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;
- (h) the names of any joint actors in connection with the disclosure required by this Appendix;
- (i) in the case of an occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, the nature and value of the consideration paid by the eligible institutional investor; and
- (j) if applicable, a description of any change in any material fact set out in a previous report by the eligible institutional investor under the early warning requirements or Part 4 in respect of the reporting issuer's securities.

2. A news release may also include

- (a) information in addition to that required by this Instrument; and
- (b) a declaration that the issuance of the news release is not an admission that a person or company named in the news release owns or controls any described securities or is a joint actor with another named person or company.

**APPENDIX G
REQUIRED DISCLOSURE**

**REQUIRED DISCLOSURE IN REPORT FILED BY AN ELIGIBLE
INSTITUTIONAL INVESTOR UNDER PART 4**

1. For each class of securities required to be reported upon under Part 4, a report shall include:
 - (a) the name and address of the eligible institutional investor;
 - (b) the net increase or decrease in the number or principal amount of securities, and in the eligible institutional investor's securityholding percentage in the class of securities, since the last report filed by the eligible institutional investor under Part 4 or the early warning requirements;
 - (c) the designation and number or principal amount of securities and the eligible institutional investor's securityholding percentage in the class of securities at the end of the month for which the report is made;
 - (d) the designation and number or principal amount of securities and the percentage of outstanding securities referred to in paragraph (c) over which
 - (i) the eligible institutional investor, either alone or together with any joint actors, has ownership and control,
 - (ii) the eligible institutional investor, either alone or together with any joint actors, has ownership but control is held by other persons or companies other than the eligible institutional investor or any joint actor²⁹, and
 - (iii) the eligible institutional investor, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;
 - (e) the purpose of the eligible institutional investor and any joint actors in acquiring or disposing of ownership of, or control over,

²⁹ Clarification has been added regarding the nature of the other person or company.

the securities, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer;

- (f) the general nature and the material terms of any agreement, other than lending arrangements, with respect to securities of the reporting issuer entered into by the eligible institutional investor, or any joint actor, and the issuer of the securities or any other person or company in connection with any transaction or occurrence resulting in the change in ownership or control giving rise to the report, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;
 - (g) the names of any joint actors in connection with the disclosure required by this Appendix;
 - (h) if applicable, a description of any change in any material fact set out in a previous report by the person or company under the early warning requirements or Part 4 in respect of the reporting issuer's securities; and
 - (i) a statement that the person or company is eligible to file reports under Part 4 in respect of the reporting issuer.
2. Despite paragraph (1)(b), an eligible institutional investor may omit the securityholding percentage from a report if the change in percentage is less than 1 percent of the class.
3. A report may also include
- (a) information in addition to that required by this Instrument; and
 - (b) a declaration that the filing of the report is not an admission that a person or company named in the report owns or controls any described securities or is a joint actor with another named person or company.