

**Notice of Proposed Amendment to and Restatement of
National Instrument 55-101 and Companion Policy 55-101CP**

Insider Reporting Exemptions

Introduction

The Canadian Securities Administrators (the CSA or we) will, subject to the receipt of necessary ministerial approvals, implement the following instruments, effective April 30, 2005:

- National Instrument 55-101 *Insider Reporting Exemptions* (the proposed instrument), and
- Companion Policy 55-101CP *Insider Reporting Exemptions* (the proposed policy).

The proposed instrument and the proposed policy (collectively the proposed materials) are intended to replace the current versions of National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (the current instrument) and Companion Policy 55-101CP *Exemption from Certain Insider Reporting Requirements* (the current policy) that came into force in all CSA jurisdictions on May 15, 2001.

The proposed instrument has been made or is expected to be made by each member of the CSA, and will be implemented as

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Ontario,
- a regulation in Québec and Saskatchewan,
- a policy in Nunavut, Prince Edward Island and the Yukon Territory, and
- a code in the Northwest Territories.

The proposed policy is expected to be implemented as a policy in the jurisdictions that adopt the proposed instrument.

The proposed materials are being published concurrently with this Notice and can be found on websites of CSA members, including the following:

- www.besc.bc.ca
- www.albertasecurities.com
- www.sfsc.gov.sk.ca
- www.msc.gov.mb.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.gov.ns.ca/nssc/

Ministerial approvals

In Saskatchewan, Commission regulations adopting the proposed instrument and other required materials were delivered to the Minister of Justice. The Minister may approve or reject the Commission regulations or return them for further consideration. If the Minister approves the Commission regulations adopting the proposed instrument or does not take any further action, the proposed instrument will come into force on April 30, 2005.

In British Columbia, the Minister of Competition, Science and Enterprise gave his approval in principle of the proposed instrument on January 14, 2004. The proposed instrument will be adopted as a rule and come into force in British Columbia on April 30, 2005, subject to obtaining final ministerial approval.

In Ontario, the proposed instrument and other required materials were delivered to the Chair of the Management Board of Cabinet on February 11, 2005 (the Minister). The Minister may approve or reject the proposed instrument or return it for further consideration. If the Minister approves the proposed instrument or does not take any further action by April 12, 2005, the proposed instrument will come into force on April 30, 2005.

In Québec, the proposed instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The proposed instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It must also be published in the *Bulletin*.

Substance and purpose

The purpose of the current instrument and the current policy is to provide certain exemptions from the obligation to file insider reports under Canadian securities legislation where the policy reasons for such reporting do not apply.

We have proposed the changes contained in the proposed materials as we believe that these changes will improve the effectiveness of the insider reporting system by better focusing the insider reporting requirement on meaningful information that is important to the market.

Accordingly, we believe that the principal benefits associated with these changes are as follows:

- enhanced deterrence against unlawful insider trading, since the insider reporting obligation will now focus more closely on insiders who routinely have access to material undisclosed information;
- increased market efficiency, since the trading activities of “true” insiders may be obscured under the current system by the large volume of insider reports filed by persons who are statutory insiders but who do not routinely have access to material undisclosed information; and

- a significant reduction in the regulatory burden associated with insider reporting on insiders, issuers and the securities regulatory authorities.

Summary of Changes to the Current Version of NI 55-101

The most significant changes to the current instrument are as follows:

- The proposed instrument contains a new exemption from the insider reporting requirements for senior officers of a reporting issuer or a subsidiary of a reporting issuer who meet the following criteria:
 - the individual is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;
 - the individual does not in the ordinary course receive or have access to information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed; and
 - the individual is not an ineligible insider (as defined in the proposed instrument).
- We have made three changes to Part 4 of the current instrument, which sets out certain actions that a reporting issuer must take before an insider of the reporting issuer may rely on an exemption contained in Parts 2 or 3:
 - The requirement in the current instrument to prepare and maintain a list of insiders exempted from the insider reporting requirement by virtue of certain provisions of the current instrument has been supplemented by a requirement to maintain a list of insiders who are not so exempted.
 - As an alternative to complying with the requirement to maintain a list of exempt insiders and a list of non-exempt insiders, a reporting issuer may instead file an undertaking with the regulator or securities regulatory authority that it will make available to the regulator or securities regulatory authority, promptly upon request, a list containing the information described in such lists as at the time of the request.
 - The proposed instrument also contains a new condition that requires a reporting issuer to establish and maintain policies and procedures relating to restricting the trading activities of its insiders and other persons with access to material undisclosed information concerning the reporting issuer.
- The exemption in the current instrument relating to *acquisitions* of securities under an “automatic securities purchase plan” has been amended to include an exemption for certain *dispositions* of securities that commonly occur under a plan, and that we believe may be reported on an annual basis. These dispositions include:

- a disposition that is incidental to the operation of the plan and that does not involve a “discrete investment decision” by the director or senior officer; and
- a disposition that is made to satisfy a tax withholding obligation arising from the distribution of securities under the plan and that results from an irrevocable election by the senior officer or director to fund the tax withholding obligation through a disposition of securities not less than 30 days prior to the date of the disposition.
- The exemption in the current instrument relating to acquisitions of securities under an automatic securities purchase plan has also been amended to provide that the alternative reporting requirement that allows for a consolidated report to be filed within 90 days of the end of the calendar year does not apply if, at the time the alternative report becomes due, the individual is no longer subject to an insider reporting requirement. This situation may arise, for example, in the following circumstances:
 - the individual is no longer an insider at the time the alternative filing requirement becomes due; or
 - the individual has become entitled to rely on an exemption contained in an exemptive relief decision or Canadian securities legislation (such as, for example, an exemption contained in NI 55-101).

Summary of written comments received by the CSA

The CSA published a draft version of the proposed instrument (the draft instrument) and proposed policy (the draft policy) together with a request for comments on May 14, 2004 (collectively, the draft materials).

The CSA received four submissions in response to this request for comments. The CSA have considered these submissions, and the final versions of the proposed instrument and proposed policy being published with this notice reflect the changes made by the CSA.

We have attached to this Notice as Appendix A a list of commenters together with a summary of the comments received and the responses of the CSA.

Changes to the proposed instrument and policy

We have attached to this notice as Appendix B a blackline showing changes made to the draft materials subsequent to the publication of the draft materials for comment on May 14, 2004.

The CSA are of the view that none of the revisions made to the draft materials is material. Accordingly, the proposed instrument and the proposed policy are not being published for a further comment period.

Local Matters

Securities regulatory authorities may also publish in their local jurisdiction, separately or as an Appendix C to this notice, additional information to comply with notice requirements specific to that jurisdiction and to reflect consequential amendments to local securities legislation and policies.

Questions

Please refer your questions to any of:

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