Appendix B

List of Commenters, Summary of Public Comments and CSA Responses

Canadian Bankers Association

Legal Advisory Committee – Autorité des marchés financiers

Market Regulation Services Inc.

McCarthy Tétrault

Ogilvy Renault

RBC Financial Group

Securities Law Subcommittee of the Business Law Section of the Ontario Bar Association

TD Bank Financial Group

Summary of comments

	Summary of comment	CSA response
A. General comments		
1. Amendments in general	Five commenters supported the amendments in general, subject to their specific comments. *(McCarthy, RBC Financial, Ontario Bar, Canadian Bankers, LAC)*	We thank the commenters for their support. We have considered all comments received and have amended the materials where we believe it is appropriate.
2. Removing requirements relating to list of insiders	Six commenters agreed with removing the requirement to maintain lists of insiders. *(RBC Financial, Ontario Bar, TD Bank Financial, Canadian Bankers, Ogilvy, LAC)*	We thank the commenters for their support.
	One commenter suggested that we should remove from the Companion Policy the suggestion that maintaining a list of insiders relying on exemptions is a best practice as it could cause confusion as to which policies and procedures are necessary to comply with applicable insider trading laws. (*McCarthy*)	We have not amended the Companion Policy in response to this comment. The suggestion to maintain a list of persons with access to undisclosed material information is not a requirement in order for insiders to rely on the exemptions in the Instrument. The suggestion is intended to be an example of a best practice that issuers may wish to consider in developing their policies and procedures relating to information containment and insider trading.

	One commenter suggested that the new guidance in Part 4 of the CP be amended to delete the words "and help them [reporting issuers] to ensure that insiders are not violating insider trading prohibitions", noting that the obligation to comply with the insider trading prohibitions rests on the insider itself, not the issuer. *(Ogilvy)*	We have amended the CP in response to this comment.
	One commenter supported including record-keeping in relation to those insiders who have the reporting obligation as an example of a best practice in 55-101CP, without reference to notices of intention or other lists. *(Canadian Bankers)*	The CP does not refer to notices of intention; however, CSA staff think that lists of insiders or persons with access to undisclosed information can be useful.
	One commenter indicated that they were not sure how the recommendation of a best practice approach of maintaining lists of knowledgeable insiders will result in the regulatory relief that many reporting issuers were looking for. *(LAC)*	The recommendation is not a requirement. Issuers can take other approaches to managing information. We will consider additional relief from the reporting requirements as part of phase 2.
3. Changing percentage thresholds in definition of "major subsidiary"	Five commenters supported the proposed amendments to increase the relevant percentages from 10 to 20% in this definition. (*RBC Financial, TD Bank Financial, Canadian Bankers, LAC, OntarioBar)* One of those commenters thought that the changes would alleviate considerably the reporting requirements of a number of officers and directors. (*LAC*). Although supporting the change, another	We thank the commenters for their support.

	of those commenters indicated that they did not think this change would have much practical effect. *(Ontario Bar)*	
	One commenter stated that, in their view, a test based on assets and revenues is not appropriate in determining which directors or senior officers of a subsidiary have access to information regarding material facts or changes with respect to the reporting issuer. Instead, they suggested that the definition of "ineligible insider" or "insider" should be refined further. *(Ogilvy)*	The suggested changes to the definition of ineligible insider or insider are beyond the scope of phase 1 of this project. We will consider changing those definitions as part of phase 2.
4. Definition of "normal course issuer bid"	One commenter suggested adopting a more generic definition of normal course issuer bid so that it would be available for a normal course issuer bid on a recognized exchange for the purposes of National Instrument 21-101 *Marketplace Operation. (RS)*	We agree with this comment and plan to amend the definition as suggested.
5. Definition of "ineligible insider"	One commenter suggested that, until the CSA combines the insider reporting requirements and exemptions in one harmonized national instrument, the	The suggested change to the definition of ineligible insider is beyond the scope of phase 1 of this project. We will consider changing the definition as part of phase 2.

	definition of "ineligible insider" should be narrowed. (Ogilvy)	
6. Summary Reporting of Insider trades by marketplaces	One commenter requested that the CSA bear in mind the order designation requirements under UMIR when drafting the phase 2 amendments. *(RS)*	We will consider these requirements as part of phase 2 of this project.
7. Proposed future amendments	Five commenters suggested that we should require fewer insiders to file insider reports. *(RBC Financial, Ontario Bar, TD Bank Financial, Ogilvy, McCarthy)*	We thank the commenters for their suggestions. We will take these comments into consideration when preparing the phase 2 amendments. We invite commenters to provide additional comments when we publish the phase 2 amendments for comment.
	Five commenters suggested that the CSA could consider accelerating the time for filing reports only if the number of insiders required to file reports was reduced. *(RBC Financial, Ontario Bar, McCarthy, TD Bank Financial, Canadian Bankers)*	We thank the commenters for this suggestion. We will take this suggestion into consideration when preparing the phase 2 amendments.
	One commenter suggested that the phase 2 amendments should adopt a definition of ineligible insider based on the definition of senior officer in s. 485.1 of the *Bank Act. (RBC Financial)*	We will take this comment into consideration when preparing the phase 2 amendments.
	One commenter suggested that we adopt a narrower definition of insider for the purposes of insider reporting requirements along the lines of 10% holders, directors and "executive officers" (as defined in NI 51-102). *(Canadian Bankers)*	We will take this comment into consideration when preparing the phase 2 amendments.

	One commenter suggested that we should harmonize penalties for missed or erroneous filings and the administrative practices applied in determining when to impose penalties. *(RBC Financial)*	The issue of harmonizing penalties and administrative practices in imposing them is beyond the scope of this project. However, the CSA will consider this comment in the context of other projects dealing with administrative penalties and practices.
B. Answers in response to questions in CSA Notice:		
1. The exemption in Part 5 of NI 55-101 that allows insiders to defer reporting acquisitions under an automatic securities purchase plan is currently available only to directors and senior officers of the reporting issuer or a subsidiary of the reporting issuer. Should we make this exemption available to persons who own or control more than 10% of the voting securities of a reporting issuer? For example, this would allow these persons to participate in a dividend reinvestment plan and report on the additional shares they acquire in this way within 90 days of the end of the calendar year. If so, should there be limits on the number or percentage of securities that the insider can acquire before being required to file a report?	Three commenters agreed that persons who own or control more than 10% of the voting securities of a reporting issuer should be able to defer reporting acquisitions under ASPPs. *(McCarthy, Canadian Bankers, Ogilvy)* One commenter felt that any extension of this exemption to 10% holders should not be limited as to the number or percentage of securities that the insider can acquire before being required to file an insider report. *(McCarthy)* One commenter was of the view that the ASPP exemption should not be available to persons who own or control more than 10% of the voting securities of a reporting issuer, because the market is interested in any further acquisitions by these persons. In the case of a dividend reinvestment plan, the 10% shareholder may acquire a not insignificant number of securities and the reporting is not unduly burdensome. *(Ontario Bar)*	We thank the commenters for their suggestions. We have decided not to include 10% holders in the phase 1 amendments but will consider as part of phase 2 whether this exemption, if it continues to be necessary, should be expanded.

	One commenter asked the CSA to consider the impact of such an exemption on the insider obligations under National Instrument 62-103 – *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) and suggested that the CSA might consider limiting the exemption according to the same thresholds as those found under the early warning system. *(LAC)*	
2. We are proposing to let insiders who are executive officers or directors of a reporting issuer rely on the ASPP exemption in section 5.1 of NI 55-101 for the acquisition of stock options or similar securities granted to the insider if the reporting issuer has previously disclosed in a press release filed on SEDAR the existence and material terms of the grant.	One commenter suggested that this proposal introduces some confusion as to the proper way to report stock option grants. In their view, a preferable approach may well be to include guidance in the companion policy as to the circumstances (if any) in which it would be appropriate for insiders to rely on the ASPP exemption. *(Ontario Bar)*	We thank the commenter for this suggestion. However, we think that the proposed approach is clear and ensures that information about stock option grants is made public on a timely basis. We will consider further questions relating to insider reporting of grants of stock options and similar securities as part of the phase 2 amendments.
	One commenter had some concerns with the proposed limitation on the use of the exemption in section 5.1 by executive officers and directors, indicating that the phrase "or similar securities" is vague and causes significant lack of clarity as to whether the existing exemption in section 5.1 would be available in any circumstances. They are concerned that this provision should not be used to expand	The exemption does not (and is not intended to) expand the type of securities that are required to be reported.

	the types of securities that are required to be reported. *(Canadian Bankers)*	
	One commenter indicated that where the notice is filed is not as important as that the information reach the public marketplace rapidly. It is their belief that disclosure of the information in the financial press is the best method to ensure prompt and timely public disclosure, which does not prevent however the requirement of the filing of a notice on either SEDAR or SEDI or both. *(LAC)*	A grant of stock options is generally not a newsworthy event. As a result, even if we require issuers to issue a press release, it is not necessarily going to be picked up by the financial press. Therefore, based on the comments received, we have amended NI 55-101 to require a notice on SEDAR, rather than a press release.
(a) Could the same result be achieved by requiring the reporting issuer to file a notice on SEDAR, rather than issuing a press release?	Four commenters were of the view that a notice on SEDAR would be sufficient. *(RBC Financial, Ontario Bar, McCarthy, Ogilvy)*	Based on the comments received, we have amended NI 55-101 to require a notice on SEDAR, rather than a press release.
	One commenter did not favour either a press release or a notice on SEDAR, but would prefer to allow reporting issuers to disclose grants of stock options and to the extent required to be reported, issuer derivatives like deferred share units,	We will consider this as part of the phase 2 amendments (and/or as part of the SEDI project). The notice on SEDAR will include detailed information about the grants to the insiders who are subject to the limitation in section 5.2(3) of NI 55-101,

	restricted share awards and long term incentive plan units, in a general report of the issuer on SEDI. *(Canadian Bankers)* That commenter also would seek clarification that any press release or notice filing on SEDAR should provide information in more general terms, not detailed with respect to "each insider".	but not for other insiders.
(b) In the future, rather than require issuers to file a press release on SEDAR, should we enhance the System for Electronic Disclosure by Insiders (SEDI) to allow reporting issuers to disclose grants of stock options and issuer derivatives like deferred share units, restricted share awards and long term incentive plan units in a report of the issuer? This report could be analogous to the "issuer event" report required under section 2.4 of National Instrument 55-102 SEDI.	Four commenters supported enhancements to SEDI that would allow a report on stock option grants to be made in a manner similar to an issuer event report. *(RBC Financial, Ontario Bar, McCarthy, Ogilvy)*	We thank the commenters for their views on this. We will consider this as part of the SEDI project.
	One commenter suggested that it would be useful to have this report be consistent with the ASPP exemption so that there are not multiple reports available for reporting stock option grants. *(Ontario Bar)*	If SEDI is enhanced to allow this type of report, we would amend NI 55-101 so that the reporting issuer would not need to file the notice on SEDAR that is contemplated in these amendments.
3. The current concern in the United States about options backdating illustrates that the market is keenly interested in the timing of stock option grants. We understand that some investors time their own market purchases of securities of an issuer based on option grants to insiders	In the opinion of one commenter, grants represent compensation decisions by the company rather than investment decisions by insiders. Therefore, the reports do not enhance the signaling function. In addition, the commenter did not think the deterrence function is relevant to compensation decisions. *(RBC Financial)*	We thank the commenters for their views on this. We will consider this as part of phase 2 of this project.

that have been publicly disclosed. We believe that stock options or similar securities granted to executive officers or directors need to be disclosed on a timely basis – either in an insider report filed on SEDI within 10 days or a press release filed by the issuer on SEDAR. We are willing to allow other insiders to rely on the ASPP exemption for grants of stock options and similar securities, provided the plan under which they are granted meets the definition of an ASPP, the conditions of the exemption are otherwise satisfied, and the insider is not making a discrete investment decision in respect of the grant. Does disclosure of grants of options and issuer derivatives to executive officers and directors provide a greater "signalling" function or "deterrence" value than disclosure of similar grants made to other insiders?	One commenter was of the view that stock option grants and issuer derivatives grants to executive officers and directors of a reporting issuer provide a greater signaling function than disclosure of similar grants to other insiders. *(McCarthy)* One commenter questions the differential treatment of executive officers and directors as compared to other insiders. It is the activities of only a very small circle of senior insiders that would likely be relevant to the market. Casting a wider reporting net places an unjustified burden on reporting issuers and their insiders that is out of all proportion to the utility of the information that such reports would provide. *(Ontario Bar)* One commenter considers it to be unlikely that option grants provide a signaling function. Most companies grant options at the same time each year such that the signaling value (and consequently deterrence value) would be more likely from not granting options than granting them. The message in such circumstances could be that there is potentially material undisclosed information. However, disclosure of securities transactions of executive officers and directors have more	

	significance in general than disclosure of similar grants and trades of a wide category of other insiders. *(Canadian Bankers)*	
	One commenter was of the view that if an ASPP is truly an automatic plan with no discrete investment decision being made upon granting, then such disclosure if properly understood should not provide a signal in the market. *(Ogilvy)*	
	One commenter was of the view that it is extremely important for information about these grants to reach the marketplace promptly and that in addition to its signaling function, the disclosure should have a deterrence value in the context of ensuring true dating of grants. *(LAC)*	