CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 55-315: FREQUENTLY ASKED QUESTIONS ABOUT REGULATION 55-104 RESPECTING INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

Référence : Non disponible

Purpose

The staff of the Canadian Securities Administrators (CSA staff or we) have prepared this notice to assist reporting insiders,[1] issuers and other market participants in relation to the new insider reporting regime established by *Regulation 55-104 respecting Insider Reporting Requirements and Exemptions* (Regulation 55-104) and to promote consistency in electronic filings on the system for electronic disclosure by insiders (SEDI).

This notice sets out a number of frequently asked questions (FAQs) that we have received relating to the transition to the new insider reporting regime contained in Regulation 55-104.

The notice contains a number of examples of arrangements and transactions together with examples of how to report these arrangements and transactions. The instructions contained in this notice are guidelines only, and do not necessarily represent the only way that such arrangements and transactions may be reported in compliance with securities law.

The Policy Statement to Regulation 55-104 (Policy Statement 55-104) and the Companion Policy to *National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102) also contain explanation and guidance on the insider reporting requirements.

CSA Staff will also shortly publish the following general guidance:

- CSA Staff 55-312 *Insider Reporting Guidelines for Certain Derivative Transactions (Equity Monetization) (REVISED)*;

- CSA Staff Notice 55-316 *Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI)* which will replace CSA Staff

[1] Prior to April 30, 2010, Canadian securities legislation generally required all persons who are “insiders” (as defined in securities legislation) to file insider reports unless they had an exemption from the insider reporting requirement. On April 30, 2010, the Canadian Securities Administrators introduced a new insider reporting regime established by Regulation 55-104. Under Regulation 55-104, the insider reporting requirement is generally limited to “reporting insiders” (as defined in Regulation 55-104) and certain persons who may be designated insiders for certain historical transactions (see s. 3.5 of Regulation 55-104). For convenience, this notice will refer to insiders subject to a reporting requirement as “reporting insiders”.

Notice 55-308 *Questions on Insider Reporting* and CSA Staff Notice 55-310 *Questions and Answers on the System for Electronic Disclosure by Insiders (SEDI)*.

If you have questions or comments with respect to the contents of this notice, please contact a member of staff. Contact information is included at the end of this notice. This notice is dated April 28, 2010. We may from time to time reissue this notice to reflect additional frequently asked questions or concerns.

1. Do existing insiders have to file a new initial report within 10 days of April 30, 2010?

Background

1. ABC Inc. (the Issuer) is a reporting issuer in all provinces and territories.

2. January 1, 2009, I became the CEO of the Issuer. I am therefore an "insider" of the Issuer under Canadian securities legislation. I have filed all required insider reports since becoming CEO.

3. On April 30, 2010, Regulation 55-104 came into force.

4. Regulation 55-104 contains a new definition of "reporting insider". The definition of "reporting insider" includes a CEO of a reporting issuer. I am therefore a "reporting insider" for this Issuer under Regulation 55-104.

5. Section 3.2 of Regulation 55-104 states that a reporting insider must file an insider report in respect of a reporting issuer, "within 10 days of becoming a reporting insider", disclosing certain prescribed information.

Question

1. Do I have to file a new initial report under section 3.2 within 10 days of April 30, 2010? (In other words, have I "become" a reporting insider as a result of Regulation 55-104 coming into force?) I do not otherwise have any transactions involving securities or related financial instruments to report.

Response

1. No, you do not have to file a new initial report. The term "reporting insider" is simply intended to refer to a defined class of insiders who have reporting obligations. A person is determined to be an insider by operation of the statutory definition of "insider". A person is a reporting insider for the purposes of the insider reporting requirements in Regulation 55-104 if the person has a position or function, such as CEO or director, or has a particular type of relationship to a reporting issuer, described in the definition of "reporting insider". We do not consider you to have "become" a reporting insider simply through the introduction of this term in Regulation 55-104.

2. Do insiders who previously filed reports but who are not reporting insiders under Regulation 55-104 have to file anything to show their change in reporting status?

Background

1. ABC Inc. (the Issuer) is a reporting issuer in all provinces and territories.

2. I am the CEO of a subsidiary of the Issuer (SubCo). Prior to April 30, 2010, I was required to file insider reports because SubCo was a "major subsidiary" of the Issuer as that term was defined in former *Regulation 55-101 respecting Insider Reporting Exemptions* (Regulation 55-101).

3. On April 30, 2010, Regulation 55-104 came into force. The definition of "major subsidiary" in Regulation 55-104 has been amended from the definition in Regulation 55-101 in that the assets and revenue thresholds have been increased from 20% to 30%.

4. SubCo is not a "major subsidiary" of the Issuer as defined in Regulation 55-104. I am not an insider of the Issuer in any capacity other than as CEO of SubCo. I am therefore not a "reporting insider" for this Issuer under Regulation 55-104.

Question

1. Do I need to amend my SEDI profile, or otherwise do anything, to disclose the fact that I am not a reporting insider under Regulation 55-104?

Response

1. No. There is no requirement to file an amended insider profile on SEDI for an insider who has ceased to have reporting obligations because the insider is not a reporting insider under Regulation 55-104.

2. However, we recommend that an insider who has previously filed insider reports, but as of April 30, 2010 is no longer required to file insider reports because they are not a "reporting insider" under Regulation 55-104, add a comment on SEDI in the "Remarks" field regarding their change of status. This can be done on either their next transaction to be filed on SEDI or by amending their last transaction already filed on SEDI. A member of the public viewing the insider reports on SEDI will then know why the insider ceased reporting.

Note: section 4.3.1.19 of CSA Staff Notice 55-310 included similar guidance for insiders who previously filed insider reports and then proposed to rely on an exemption from insider reporting in Part 2 or Part 3 of Regulation 55-101.

3. Can a reporting insider rely on the exemption in Part 5 of Regulation 55-104 (exemption for automatic securities purchase plans) for a grant of related financial instruments under a compensation arrangement?

Response

1. No. See section 5.3 of Regulation 55-104 which states that the exemption in section 5.2 does not apply to an acquisition of options or similar securities granted to a director or officer. Subsection 5.1(2) states that, in Part 5, a reference to a security of a reporting issuer includes a related financial instrument involving a security of the reporting issuer. See section 5.1 of Policy Statement 55-104 for related commentary.

A reporting insider can rely on the exemption in Part 6 of Regulation 55-104 (exemption for certain issuer grants) for a grant of related financial instruments under a compensation arrangement if the issuer files an issuer grant report in accordance with Part 6.

Despite the above, if a compensation arrangement provides for the automatic issuance of related financial instruments as dividend equivalents, staff would accept that aspect of the compensation arrangement as coming within the definition of "automatic securities purchase plan" for the purposes of Part 5 of Regulation 55-104. We would not consider an issuance in these circumstances to be a grant for the purposes of section 5.3 of Regulation 55-104.

4. How do I report a grant of related financial instruments made prior to April 30, 2010?

Background

1. ABC Inc. (the Issuer) is a reporting issuer in all provinces and territories.

2. I am the CEO of the Issuer and therefore a "reporting insider" for this Issuer under Regulation 55-104. I did not hold any deferred share units (DSUs) when I became an insider of the Issuer.

3. On March 15, 2010, I received a grant of 100 DSUs.

4. The redemption value of a DSU is equal to the market value of a common share of the Issuer at the time of redemption, in accordance with the DSU Plan. The DSUs are cash-settled and do not provide for or permit settlement in securities of the Issuer. The DSUs do not entitle the holder to voting or other shareholder rights. The DSUs cannot be redeemed for cash until the holder has ceased to be a director, officer or employee of the Issuer.

5. At the time of the grant, I confirmed that the DSUs do not, as a matter of law, constitute securities and are therefore not subject to the ordinary insider reporting requirements applicable to securities. I also confirmed that the Issuer has disclosed the existence and material terms of the DSU Plan in its circular and that I was therefore eligible for the reporting exemption in s. 2.2(b) of *Regulation 55-103 respecting Insider Reporting for Certain Derivative Transactions (Equity Monetization)* (Regulation 55-103) and, in British Columbia, Part 3 of BCI 55-506 *Exemption from insider reporting requirements for certain derivative transactions* (BCI 55-506).

6. Accordingly, I did not file an insider report to report the grant of 100 DSUs on March 15, 2010.

7. On April 30, 2010, Regulation 55-104 came into force.

8. On May 15, 2010, I received a further grant of 100 DSUs.

9. The Issuer has not filed an issuer grant report about this grant.

Questions

1. Do I need to file a report about the March grant of DSUs? If yes, when do I need to file it by? (For example, do I need to file it within 10 days of April 30, 2010?)

2. Do I need to file a report about the May grant of DSUs? If yes, when do I need to file it by?

3. If I need to file a report about the May grant, do I show a balance of 100 or 200 DSUs?

Responses

1. Assuming the DSUs are not securities, and the March grant was properly covered by the exemptions in Regulation 55-103 and BCI 55-506, you do not need to file an insider report about the March grant. Accordingly, there is no requirement to file a report about the March grant within 10 days of April 30, 2010. However, the next time there is a change in your holdings of DSUs (i.e., the May 15 grant), before you can report this change, you will first need to take a step to reflect the March grant in your holdings. We have set out below two methods for doing this. Either method is acceptable so long as you explain in the General Remarks section which method you are using.

2. Assuming the DSUs are not securities, they would likely be considered “related financial instruments” under Regulation 55-104. Accordingly, you are required to file an insider report about the May grant within 10 days of the grant, or by May 25, 2010.

Note: If the issuer files an issuer grant report about this grant on or before May 25, 2010, the deadline for the insider report is March 31, 2011. When filing this report, use nature of transaction code 56 – grant of rights. See Part 6 of Regulation 55-104 for more information.

Note: SEDI does not use the term "related financial instrument". For the purposes of filing on SEDI, the term "security" applies to both securities and related financial instruments.

3. Before you can file a report about the May 15 grant of 100 DSUs, you will need to reflect the March 15 grant in your holdings. There are two methods for doing this. These are described below.

In order to file an insider report about a grant of securities or related financial instruments, it is first necessary

a. to confirm that the Issuer has created a security designation for this type of instrument, and

b. record an Opening Balance on Initial Report for the DSUs.

If the Issuer has not created a security designation for DSUs, you should contact the Issuer and request the Issuer to add the security designation to its issuer profile supplement. If the Issuer is unable to comply in a timely manner, you should contact the securities regulatory authority that is the principal regulator for the Issuer (generally, the securities regulatory authority in the jurisdiction where the Issuer's head office is located).

Method 1 – filing an opening balance that shows the March grant

4. Under this method, you can reflect the March grant in your opening balance. (If there are other prior grants of the same type of DSU, aggregate all such grants.)

5. When you record an Opening Balance for the DSUs, you should include a remark in the General Remarks section to explain that you are using method 1. Failure to do this may result in the filing being misleading. For example,

"Opening balance for DSUs reflects grant of 100 DSUs on March 15, 2010. At the time of the grant, the grant was exempt from reporting requirements under Part 2 of Regulation 55-103 and Part 3 of BCI 55-506".

Note: Ordinarily, the Opening Balance is intended to reflect the insider's holdings as of the date the insider became an insider. In this case, if the individual first became an insider on January 1, 2009, but did not receive any DSUs until the March 15, 2010 grant, then the record will be potentially misleading unless the insider also includes a

comment in the general remarks section to explain that opening balance for DSUs reflects the grant of 100 DSUs on March 15, 2010.

6. When filing the insider report about the May 15, 2010 grant of DSUs, report the number of DSUs awarded and the equivalent number of underlying common shares. Use nature of transaction code 56 – grant of rights.

For more information, please refer to the section "Insider Report for Deferred Share Units (DSU) or Restricted Share Awards" in the online SEDI help.

Method 2 – notional adjusting transaction

7. Under this method, you would first file an opening balance of "0" for the DSUs.

8. Then, prior to filing an insider report to reflect the May 15 grant of 100 DSUs, you would file a report to show a *notional* acquisition of the 100 DSUs that were granted on March 15, 2010. (If there are other prior grants of the same type of DSU, aggregate all such grants.)

9. If this method is used, you should use the *date of filing* as the date of the notional acquisition, and not the actual date of acquisition (i.e., March 15, 2010) for the transaction date.

Note: If you use the actual date of acquisition, or March 15, 2010, this may generate a late filing invoice. If this occurs, contact CSA staff in the jurisdiction which acts as principal regulator for the Issuer for assistance.

10. When you file the report about the notional acquisition, you should include a remark in the General Remarks section to explain that you are using method 2. Failure to do this may result in the filing being misleading. For example,

"Notional transaction to reflect grant of 100 DSUs on March 15, 2010. At the time of the grant, the grant was exempt from reporting requirements under Part 2 of Regulation 55-103 and Part 3 of BCI 55-506".

Note: If you do not include an explanation in the general remarks section, this may suggest there was an actual acquisition of 100 DSUs on the date of filing (in addition to the grant of 100 DSUs granted on May 15, 2010). This may result in the public record being misleading. In addition, if the DSU exercise price is based on the share price on the actual date of grant (i.e., March 15, 2010), but the filing date is used as the transaction date without explanation in the general remarks section, this may suggest that DSUs have not been granted in accordance with the DSU plan.

5. How do I report additional DSUs received as dividends?

Background

1. Same facts as in preceding FAQ.

2. The Issuer has a dividend reinvestment plan (the DRIP) that provides that a holder of common shares may choose to receive additional common shares in lieu of cash dividends.

3. On June 30, 2010, the Issuer declared a dividend on its common shares. Under the Issuer's DRIP, a holder of common shares would receive one additional common share for each 10 common shares held.

4. Similarly, under the DSU Plan, additional DSUs are received as dividend equivalents. A participant in the DSU Plan cannot exercise any discretion in terms of the receipt of additional DSUs as dividend equivalents (i.e., the participant cannot choose between receiving DSUs or cash).

5. Accordingly, on June 30, 2010, I received an additional 20 DSUs as a dividend on the 200 DSUs I currently hold.

Question

1. Do I need to file an insider report about the additional 20 DSUs received on June 30, 2010 within 10 days of the acquisition?

Response

1. If the issuer files an issuer grant report about a grant of DSUs after April 30, 2010, and the issuer grant report discloses, in addition to all other required information, the fact that each time the issuer issues common shares as dividends on its common shares, holders of DSUs will automatically receive corresponding DSUs as dividends, staff will accept that the exemption in section 6.2 of Regulation 55-104 is available for the issuance of the additional DSUs as dividend equivalents.

2. In this case, the information required by section 6.3 will be readily determinable based on the issuer grant report and public disclosure by the issuer about the declaration of a dividend. You would need to file an alternative report by March 31, 2011 showing all DSUs received as dividend equivalents.

3. Alternatively, so long as the reporting insider cannot exercise any discretion in terms of the issuance of additional DSUs as dividend equivalents under the DSU Plan, staff would accept that aspect of the DSU Plan as coming within the definition of "automatic securities purchase plan" for the purposes of Part 5 of Regulation 55-104. (Note that we would not accept that the DSU Plan generally

constitutes an automatic plan for the purposes of the *initial grant* of DSUs under the Plan. This is because timely disclosure of grants of securities and similar instruments, whether through the insider reporting system or through the issuer filing an issuer grant report, can provide important information to investors and allows investors to monitor whether insiders may be causing issuers to engage in improper or unauthorized dating practices including backdating, spring-loading and bullet-dodging. See section 5.1 of Policy Statement 55-104.)

4. Accordingly, you can rely on the exemption in Part 5 of Regulation 55-104 for acquisitions of securities and related financial instruments under an automatic plan. You would need to file an alternative report by March 31, 2011 showing all DSUs received as dividend equivalents.

6. What information do I need to include in an issuer grant report?

Response

1. The issuer grant report must contain the information required by section 6.3 of Regulation 55-104.

2. An example of a report would be as follows:

On November 1, 2010, ABC Inc. granted a total of 1,000,000 incentive stock options to directors, officers, employees and consultants of ABC Inc. Details of options granted to reporting insiders are:

Name	Number of Options
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
[Insert name of recipient]	10,000
TOTAL	80,000

These stock options have an exercise price of $2.00 and expire on October 31, 2015.

The options were granted under the stock option plan described in the ABC Inc. Information Circular dated June 30, 2010.

3. The issuer grant report function on SEDI is subject to the following restrictions:

Title box character limit: 120
Text box character limit: 4,000
Private remarks to regulators box character limit: 256

Note: If it is not possible to adequately describe a transaction or to include all of the material terms of a transaction in the space provided, consider making reference to a public document (e.g., a news release issued by the issuer) that further describes the transaction. Alternatively, this information may be included in a schedule that may be filed in paper format by facsimile in accordance with the provisions of Part 3 of NI 55-102. Fax the schedule to the facsimile number of the securities regulatory authority set out on Form 55-102F6. We recommend that you make reference to this filing by facsimile in the general remarks field on SEDI. Staff will make this schedule available to the public on request.

7. If an issuer files an issuer grant report within the normal filing period (i.e., 10-days in the case of grants prior to November 1, 2010, five days in the case of grants on or after November 1, 2010), but an insider then files an insider report about the grant after the normal filing deadline has expired, will there be a late fee for that filing?

Response

Late fees will be levied based on the information we receive from issuers and reporting insiders. In the example above, if the insider filed an insider report about a grant outside the normal filing period, and we levied a late fee based on this filing, and the insider then advised us that the issuer had in fact filed an issuer grant report within the filing period, staff would likely recommend a waiver of the late fee because the insider had an exemption available.

Questions

Please refer your questions to any of:

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