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POLICY STATEMENT TO REGULATION 55-104 RESPECTING INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1. Introduction and Purpose

(1) Regulation 55-104 respecting Insider Reporting Requirements and Exemptions (chapter V-1.1, r. 31) (the Regulation) sets out the principal insider reporting requirements and exemptions for insiders of reporting issuers.[1]

(2) The purpose of this Policy Statement is to help you understand how the Canadian Securities Administrators (the CSA or we) interpret or apply certain provisions of the Regulation.

1.2. Background to the Regulation

(1) The Regulation consolidates the principal insider reporting requirements and most exemptions in one location. This will make it easier for issuers and insiders to locate and understand their obligations and will help promote timely and effective compliance.

(2) The focus of the Regulation is on the substantive legal insider reporting requirements rather than the procedural requirements relating to the filing of insider reports. Issuers and insiders should review National Statement 55-102 System for Electronic Disclosure by Insiders (SEDI) (chapter V-1.1, r. 30) (NI 55-102) in order to determine their obligations for the filing of insider reports.

(3) Although the Regulation sets out the principal insider reporting requirements and exemptions for issuers and insiders in Canada, a number of other CSA Regulations also contain exemptions from the insider reporting requirements, including

(a) Regulation 51-102 respecting Continuous Disclosure Obligations (chapter V-1.1, r. 24);

(b) Regulation 62-103 respecting The Early Warning System and Related Take-Over Bid and Insider Reporting Issues (chapter V-1.1, r. 34);

[1] In Ontario, the principal insider reporting requirements are set out in Part XXI of the *Securities Act* (R.S.O. 1990, c. S-5) (Ontario) (the Ontario Act). See Part 2 of this Policy Statement.

(c) National Instrument 71-101 The Multijurisdictional Disclosure System (chapter V-1.1, r. 36); and

(d) Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (chapter V-1.1, r. 37).

We have not included the insider reporting exemptions from these Regulations in the Regulation because we think these exemptions are better situated within the context of these other Regulations. Issuers and insiders therefore may wish to review these Regulations in determining whether any additional exemptions from the insider reporting requirements are available.

1.3. Policy Statement Rationale for Insider Reporting in Canada

(1) The insider reporting requirements serve a number of functions. These include deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of an issuer, and, by inference, the insiders' views of their issuer's prospects.

(2) Insider reporting also helps prevent illegal or otherwise improper activities involving stock options and similar equity-based regulations, including stock option backdating, option repricing, and the opportunistic timing of option grants (spring-loading or bullet-dodging). This is because the requirement for timely disclosure of option grants and public scrutiny of such disclosure will generally limit opportunities for issuers and insiders to engage in improper dating practices.

(3) Insiders should interpret the insider reporting requirements in the Regulation with these Policy Statement rationales in mind and comply with the requirements in a manner that gives priority to substance over form.

1.4. Definitions used in the Regulation

*(1) **General***

The Regulation provides definitions of many terms that are defined in the securities legislation of some local jurisdictions but not others. A term used in the Regulation and defined in the securities statute of a local jurisdiction has the meaning given to it in the local securities statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern insider reporting; or (b) the context otherwise requires.

This means that, in the jurisdictions specifically excluded from the definition, the definition in the local securities statute applies. However, in the jurisdictions not specifically excluded from the definition, the definition in the Regulation applies.

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

(2) ***Directors and Officers***

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

Similarly, the terms "CEO", "CFO" and "COO" include the individuals that have the responsibilities normally associated with these positions or act in a similar capacity. This determination is to be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

(3) ***Economic Interest***

The term "economic interest" in a security is a core component of the definition of "related financial instrument" which is part of the primary insider reporting requirement in Part 3 of the Regulation. We intend the term to have broad application and to refer to the economic attributes ordinarily associated in common law with beneficial ownership of a security, including

- *the potential for gain in the nature of interest, dividends or other forms of distributions or reinvestments of income on the security;*

- *the potential for gain in the nature of a capital gain realized on a disposition of the security, to the extent that the proceeds of disposition exceed the tax cost (that is, gains associated with an appreciation in the security's value); and*

- *the potential for loss in the nature of a capital loss on a disposition of the security, to the extent that the proceeds of disposition are less than the tax cost (that is, losses associated with a fall in the security's value).*

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

(4) Economic Exposure

The term "economic exposure" is used in Part 4 of the Regulation and is part of the supplemental insider reporting requirement. The term generally refers to the link between a person's economic or financial interests and the economic or financial interests of the reporting issuer of which the person is an insider.

For example, an insider with a substantial proportion of his or her personal wealth invested in securities of his or her reporting issuer will be highly exposed to changes in the fortunes of the reporting issuer. By contrast, an insider who does not hold securities of a reporting issuer (and does not participate in a compensation arrangement involving securities of the reporting issuer) will generally be exposed only to the extent of their salary and any other compensation arrangements provided by the issuer that do not involve securities of the reporting issuer.

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

(5) Major Subsidiary

The definition of "major subsidiary" is a key element of the definition of "reporting insider". The determination of whether a subsidiary is a major subsidiary will generally require a backward-looking determination based on the issuer's most recent financial statements.

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

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

(6) ***Related Financial Instrument***

Historically, there has been some uncertainty as to whether, as a matter of law, certain derivative instruments involving securities are themselves securities. This uncertainty has resulted in questions as to whether a reporting obligation existed or how insiders should report a derivative instrument. The Regulation resolves this uncertainty by including derivative instruments in the definition of "related financial instrument". Under the Regulation, it is not necessary to determine whether a particular derivative instrument is a security or a related financial instrument since the insider reporting requirement in Part 3 of the Regulation applies to both securities and related financial instruments.

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

- *a forward contract, futures contract, stock purchase contract or similar contract involving securities of the insider's reporting issuer;*

- *options issued by an issuer other than the insider's reporting issuer;*

- *stock-based compensation instruments, including phantom stock units, deferred share units (DSUs), restricted share awards (RSAs), performance share units (PSUs), stock appreciation rights (SARs) and similar instruments;*

- *a debt instrument or evidence of deposit issued by a bank or other financial institution for which part or all of the amount payable is determined by reference to the price, value or level of a security of the insider's reporting issuer (a linked note); and*

- *most other agreements, arrangements or understandings that were previously subject to an insider reporting requirement under former Regulation 55-103 respecting Insider Reporting for Certain Derivative Transactions (Equity Monetization) (Regulation 55-103).*

(7) ***Reporting insider***

We developed the term "reporting insider" specifically for the purposes of the insider reporting requirements and exemptions in the Regulation. It allows us to focus the insider reporting requirement on a core group of persons and companies who in some cases are not "insiders" as defined in securities legislation. There are additional obligations and prohibitions on 'insiders' as defined in our Acts, such as the important prohibition on illegal insider trading.

The concept of reporting insider is discussed in section 3.1 of this Policy Statement.

1.5. References to the term "day" in the Regulation

References in the Regulation to the term "day" mean calendar day (as opposed to business day). This is consistent with how we use this term elsewhere in securities legislation and the statutory interpretation of the term "day" in each of the CSA jurisdictions.

1.6. Persons and companies designated or determined to be insiders

Section 1.2 of the Regulation designates or determines certain persons and companies to be insiders of a reporting issuer. The Regulation uses the terms "designate" and "determine" since these are the terms used in securities legislation in different jurisdictions. The designation or determination is for the purposes of the insider reporting requirements in the Regulation only. However, in many cases, persons and companies designated or determined to be insiders will also be insiders in another capacity. For example, section 1.2 designates or determines officers and directors of a management company that provides significant management or administrative services to a reporting issuer to be insiders of that reporting issuer. These individuals may also be officers and directors of the reporting issuer under the extended definitions of "officer" and "director" which typically include persons acting in capacities similar to those of a director or an officer or individuals who perform similar functions. The purpose of designating or determining these individuals to be insiders is to clarify these individuals' insider reporting obligations and to avoid uncertainty.

PART 2 APPLICATION

2.1. Application in Ontario

In Ontario, the insider reporting requirements are set out in Part XXI of the Ontario Act (R.S.O. 1990, c. S-5). For this reason, sections 3.2 and 3.3 of the Regulation do not apply in Ontario. However, the insider reporting requirements set out in the Regulation and in Part XXI of the Ontario Act are substantially harmonized. Accordingly, in this Policy Statement, we omit separate references to the requirements of the Ontario Act except where it is necessary to highlight a difference between the requirements of the Regulation and the Ontario Act.

PART 3 PRIMARY INSIDER REPORTING REQUIREMENT

3.1. Concept of reporting insider

(1) General

Subsection 1.1(1) of the Regulation contains the definition of "reporting insider". The definition represents a principles-based approach to determining which insiders

should file insider reports and enumerates a list of insiders whom we think generally satisfy both of the following criteria:

(i) the insider in the ordinary course receives or has 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

Iii) the insider directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer.

In addition to enumerating a list of insiders, the definition also includes, in paragraph (i), a "basket" provision that explicitly states these 2 criteria. The basket provision articulates the fundamental principle that an insider who satisfies the criteria of routine access to material undisclosed information concerning a reporting issuer and significant influence over the reporting issuer should file insider reports.

(2) ***Interpreting the basket criteria***

The CSA consider that insiders who come within the enumerated list of positions in the definition of reporting insider will generally satisfy the criteria of routine access to material undisclosed information and significant influence over the reporting issuer. We recognize that this may not always be the case for certain positions in the definition and have therefore included an exemption in section 9.3 of the Regulation for directors and officers of significant shareholders based on lack of routine access to material undisclosed information.

If an insider does not fall within any of the enumerated positions, the insider should consider whether the insider has access to material undisclosed information and has influence over the reporting issuer that is reasonably commensurate with that of one or more of the enumerated positions. If the insider satisfies both of these criteria, the insider will fall within the basket provision of the reporting insider definition.

(3) ***Meaning of significant power or influence***

In determining whether an insider satisfies the significant influence criterion, the insider should consider whether the insider exercises, or has the ability to exercise, significant influence over the business, operations, capital or development of the issuer that is reasonably comparable to that exercised by one or more of the enumerated positions in the definition.

Certain positions or relationships with the issuer may give rise to reporting insider status in the case of certain issuers but not others, depending on the importance of the position or relationship to the business, operations, capital or development of the particular issuer. Similarly, the importance of a position or relationship to an issuer may change over time. For example, the directors and the CEO, CFO and COO of a 20%

subsidiary (i.e. not a "major subsidiary", as defined in the Regulation) who are not reporting insiders for any other reason may be reporting insiders prior to and during a significant business acquisition or reorganization, or a market moving announcement.

(4) ***Exercise of reasonable judgment***

The determination of whether an insider is a reporting insider based on the criteria in the basket provision will generally be a question of reasonable judgment. The CSA expect insiders to make reasonable determinations after careful consideration of all relevant facts but recognize that a reasonable determination may not always be a correct determination. The CSA recommend that insiders consult with their issuers when making this determination since confirming that the insider's conclusion is consistent with the issuer's view may help establish that a determination was reasonable. Insiders may also wish to seek professional advice or consider the reporting status of individuals in similar positions with the issuer or other similarly situated issuers.

3.2. Meaning of beneficial ownership

(1) ***General***

The term "beneficial ownership" is not defined in securities legislation. Accordingly, beneficial ownership must be determined in accordance with the ordinary principles of property and trust law of a local jurisdiction. In Québec, due to the fact that the concept of beneficial ownership does not exist in civil law, the meaning of beneficial ownership has the meaning ascribed to it in section 1.4 of Regulation 14-501Q respecting Definitions (chapter V-1.1, r. 4). The concept of beneficial ownership in Québec legislation is often used in conjunction with the concept of control and direction, which allows for a similar interpretation of the concept of common law beneficial ownership in most jurisdictions.

(2) ***Deemed beneficial ownership***

Although securities legislation does not define beneficial ownership, securities legislation in certain jurisdictions may deem a person to beneficially own securities in certain circumstances. For example, in some jurisdictions, a person is deemed to beneficially own securities that are beneficially owned by a company controlled by that person or by an affiliate of such company.

(3) ***Post-conversion beneficial ownership***

Under the Regulation, a person has "post-conversion beneficial ownership" of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the security within 60 days. For example, a person who owns special warrants convertible at any time and without payment of additional consideration into common shares will be considered to have post-conversion beneficial ownership of

the underlying common shares. Under the Regulation, a person who has post-conversion beneficial ownership of securities may in certain circumstances be designated or determined to be an insider and may be a reporting insider. For example, if a person owns 9.9% of an issuer's common shares and then acquires special warrants convertible into an additional 5% of the issuer's common shares, the person will be designated or determined to be an insider under section 1.2 of the Regulation and will be a reporting insider under subsection 1.1(1) of the Regulation.

The concept of post-conversion beneficial ownership of the underlying securities into which securities are convertible within 60 days is consistent with similar provisions for determining beneficial ownership of securities for the purposes of the early warning requirements in section 1.8 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids (chapter V-1.1, r. 35) and in Ontario, subsection 90(1) of the Ontario Act (R.S.O. 1990, c. S-5).

(4) ***Beneficial ownership of securities held in a trust***

Under common law trust law, legal ownership is commonly distinguished from beneficial ownership. A trustee is generally considered to be the legal owner of the trust property; a beneficiary, the beneficial owner. Under the Québec civil law, a trust is governed by the Civil Code of Québec (C.c.q.).

A reporting insider who has a beneficial interest in securities held in a trust may have or share beneficial ownership of the securities for insider reporting purposes, depending on the particular facts of the arrangement and upon the governing law of the trust, whether common law or civil law. We will generally consider a person to have or share beneficial ownership of securities held in a trust if the person has or shares

(a) a beneficial interest in the securities held in the trust and has or shares voting or investment power over the securities held in the trust; or

(b) legal ownership of the securities held in the trust and has or shares voting or investment power over the securities held in the trust.

(5) ***Disclaimers of beneficial ownership***

The CSA generally will not regard a purported disclaimer of a beneficial interest in, or beneficial ownership of, securities as being effective for the purposes of determining beneficial ownership under securities legislation unless such disclaimer is irrevocable and has been generally disclosed to the public.

(6) ***When ownership passes***

Securities legislation of certain local jurisdictions provides that ownership is deemed to pass at the time an offer to sell is accepted by the purchaser or the purchaser's agent or an offer to buy is accepted by the vendor or the vendor's agent.

The CSA is of the view that, for the purposes of the insider reporting requirement beneficial ownership passes at the same time.

3.3. Meaning of control or direction

(1) The term "control or direction" is not defined in Canadian securities legislation except in Québec, where the Securities Act (chapter V-1.1) (Québec), in sections 90, 91 and 92, defines the concept of control and deems situations where a person has control over securities. For purposes of the Regulation, a person will generally have control or direction over securities if the person, directly or indirectly, through any contract, arrangement, understanding or relationship or otherwise has or shares

(a) voting power, which includes the power to vote, or to direct the voting of, such securities and/or

(b) investment power, which includes the power to acquire or dispose, or to direct the acquisition or disposition of such securities.

(2) A reporting insider may have or share control or direction over securities through a power of attorney, a grant of limited trading authority, or a management agreement. This would also include a situation where a reporting insider acts as a trustee for an estate (or in Québec as a liquidator) or other trust in which securities of the reporting insider's issuer are included within the assets of the trust. This may also be the case if a spouse (or any other person related to the reporting insider) owns the securities or acts as trustee, but the reporting insider has or shares control or direction over the securities held in trust. In addition, this may be the case where the reporting insider is an officer or director of another issuer that owns securities of the reporting insider's issuer and the reporting insider is able to influence the investment or voting decisions of the issuer.

PART 4 SUPPLEMENTAL INSIDER REPORTING REQUIREMENT

4.1. Supplemental insider reporting requirement

(1) Part 4 of the Regulation contains the supplemental insider reporting requirement. The supplemental insider reporting requirement is consistent with the predecessor insider reporting requirement for derivatives that previously existed in some jurisdictions under former Regulation 55-103. However, because Part 3 of the Regulation requires insiders, as part of the primary insider reporting requirement, to file insider reports about transactions involving "related financial instruments", most transactions that were previously subject to a reporting requirement under former Regulation 55-103 will be subject to the primary insider reporting requirement under Part 3 of the Regulation.

(2) If a reporting insider enters into an equity monetization transaction or other derivative-based transaction that falls outside of the primary insider reporting requirement in Part 3 of the Regulation, the reporting insider must report the transaction under Part 4. For example, certain types of monetization transactions may be found to

alter an insider's "economic exposure" to the insider's issuer but not alter the insider's "economic interest in a security". If a reporting insider enters into, materially amends or terminates this type of transaction, the insider must report the transaction under Part 4.

4.2. Insider reporting of equity monetization transactions

(1) What are equity monetization transactions?

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

(2) What are the concerns with equity monetization transactions?

Where a reporting insider enters into a monetization transaction, and does not disclose the existence or material terms of that transaction, there is potential for harm to investors and the integrity of the insider reporting regime because

- *an insider in possession of material undisclosed information, although prohibited from trading in securities of the issuer, may be able to profit improperly from such information by entering into derivative-based transactions that mimic trades in securities of the reporting issuer;*

- *market efficiency will be impaired since the market is deprived of important information relating to the market activities of the insider; and*

- *since the insider's publicly reported holdings no longer reflect the insider's true economic position in the issuer, the public reporting of such holdings (e.g., in an insider report or a proxy circular) may in fact materially mislead investors.*

If a reporting insider enters into a transaction which satisfies one or more of the Policy Statement rationales for insider reporting, but for technical reasons it may be argued that the transaction falls outside of the primary insider reporting requirement in Part 3 of the Regulation, the insider will be required to file an insider report under Part 4 unless an exemption is available. In this way, the market can make its own determination as to the significance, if any, of the transaction in question.

PART 5 AUTOMATIC SECURITIES PURCHASE PLANS

5.1. Automatic Securities Purchase Plans

(1) Section 5.1 of the Regulation contains an interpretation provision that applies to Part 5. Because of this provision, directors and officers of a reporting issuer and of a major subsidiary of a reporting issuer can use the exemption in this Part for both acquisitions and specified dispositions of securities and related financial instruments under an automatic securities purchase plan (ASPP).

(2) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan or a lump-sum provision of a share purchase plan.

(3) The exemption does not apply to an "automatic securities disposition plan" (sometimes referred to as a "pre-arranged structured sales plan") (an ASDP) established between a reporting insider and a broker, since an ASDP is designed to facilitate dispositions not acquisitions. However, if a reporting insider can demonstrate that an ASDP is genuinely an automatic plan and that the insider cannot make discrete investment decisions through the plan, we may consider granting exemptive relief on an application basis to permit the insider to file reports on an annual basis.

(4) The exemption is not available for a grant of options or similar securities to reporting insiders, since, in many cases, the reporting insider will be able to make an investment decision in respect of the grant. If an insider is an executive officer or a director of the reporting issuer or a major subsidiary, the insider may be participating in the decision to grant the options or other securities. Even if the insider does not participate in the decision, we think information about options or similar securities granted to this group of insiders is important to the market and the insider should disclose this information in a timely manner.

5.2. Specified Dispositions of Securities

(1) Paragraph 5.1(3)(a) of the Regulation provides that a disposition or transfer of securities is a specified disposition if, among other things, it does not involve a "discrete investment decision" by the director or officer. The term "discrete investment decision" generally refers to the exercise of discretion involved in a specific decision to purchase, hold or sell a security. The purchase of a security as a result of the application of a pre-determined, mechanical formula does not generally represent a discrete investment decision (other than the initial decision to enter into the plan). For example, for an individual who holds stock options in a reporting issuer, the decision to exercise the stock options will generally represent a discrete investment decision. If the individual is a reporting insider, we think the individual should report this information in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions.

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

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

5.3. Alternative Reporting Requirements

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

5.4. Exemption from the Alternative Reporting Requirement

The rationale underlying the alternative reporting requirement is the need for reporting insiders to periodically update their publicly disclosed holdings to ensure that their publicly disclosed holdings convey an accurate picture of their holdings. If an individual has ceased to be subject to the insider reporting requirements at the time the alternative report becomes due, the market generally would not benefit from the information in the alternative report. Accordingly, we provided an exemption in subsection 5.4(3) of the Regulation in these circumstances.

5.5. Design and Administration of Plans

(1) Part 5 of the Regulation provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation in an ASPP, is not making discrete investment decisions for acquisitions under such plan. Accordingly, if it is intended that insiders of an issuer rely on this exemption for a

particular plan of an issuer, the issuer should design and administer the plan in a manner that is consistent with this limitation.

(2) To fit within the definition of an ASPP, the plan must set out a written formula or criteria for establishing the timing of the acquisitions, the number of securities that the insider can acquire and the price payable. If a plan participant is able to exercise discretion in relation to these matters either in the capacity of a recipient of the securities or through participating in the decision-making process of the issuer making the grant, he or she may be able to make a discrete investment decision in respect of the grant or acquisition. We think a reporting insider in these circumstances should disclose information about the grant within the normal timeframe and not on a deferred basis.

PART 6 ISSUER GRANT REPORTS

6.1. Overview

(1) Section 6.1 of the Regulation contains an interpretation provision that applies to Part 6. Because of this provision, directors and officers of a reporting issuer or a major subsidiary of a reporting issuer who are reporting insiders of the reporting issuer can use the exemption in this Part for grants of securities and related financial instruments.

(2) A reporting insider who intends to rely on the exemption in Part 6 for a grant of stock options or similar securities must first confirm that the issuer has made the public disclosure required by section 6.3 of the Regulation. If the issuer has not made the required disclosure within the required time, the reporting insider must report the grant within the required time and in accordance with the normal reporting requirements under Part 3 of the Regulation.

6.2. Policy Statement rationale for the issuer grant report exemption

(1) The issuer grant report exemption reduces the regulatory burden on insiders that is associated with insider reporting of stock options and similar instruments since it allows an issuer to make a single filing on SEDI. This filing provides the market with timely information about the existence and material terms of the grant, making it unnecessary for each of the affected reporting insiders to file an insider report about the grant within the ordinary time periods.

(2) The concept of an issuer grant report is generally similar to the concept of an issuer event report in that the decision to make the grant originates with the issuer. Accordingly, at the time of the grant, the issuer will generally be in a better position than the reporting insiders who are the recipients of the grant to communicate information about the grant to the market in a timely manner.

(3) There is no obligation for an issuer to file an issuer grant report for a grant of stock options or similar instruments. An issuer may choose to do so to assist its

reporting insiders with their reporting obligations and to communicate material information about its compensation practices to the market in a timely manner.

(4) If an issuer chooses not to file an issuer grant report, the issuer should take all reasonable steps to notify reporting insiders of their grants in a timely manner to allow reporting insiders to comply with their reporting obligations.

(5) The concept of an issuer grant report is different from the issuer event report that an issuer is required to make under Part 2 of Regulation 55-102 in that an issuer is not required to file an issuer grant report.

6.3. Format of an issuer grant report

There is no required format for an issuer grant report. However, an issuer grant report must include the information required by section 6.3 of the Regulation.

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

7.1. Introduction

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

7.2. General exemption for transactions that have been generally disclosed

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

PART 8 EXEMPTION FOR CERTAIN ISSUER EVENTS

8.1. [Intentionally left blank]

PART 9 EXEMPTIONS

9.1. Scope of exemptions

The exemptions under the Regulation are only exemptions from the insider reporting requirements contained in the Regulation and are not exemptions or defences from the provisions in Canadian securities legislation imposing liability for improper insider trading.

9.2. Reporting Exemption

The definition of "reporting insider" includes certain enumerated persons or companies that generally satisfy the criteria contained in subsection (i) of the definition of reporting insider, namely, routine access to material undisclosed information and significant power or influence over the reporting issuer. Although there is no general exemption for the enumerated persons or companies based on lack of routine access to material undisclosed information or lack of power or influence, we will consider applications for exemptive relief where the issuer or reporting insider can demonstrate that the reporting insider does not satisfy these criteria. This might include, for example, a situation where a foreign subsidiary may appoint a locally resident individual as a director to meet residency requirements under applicable corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.

9.3. Reporting Exemption (certain directors and officers of insider issuers)

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

9.4. Exemption for a pledge where there is no limitation on recourse

The exemption in paragraph 9.7(b) of the Regulation is limited to pledges of securities in which there is no limitation on recourse since a limitation on recourse may effectively allow the borrower to "put" the securities to the lender to satisfy the debt. The limitation on recourse may effectively represent a transfer of the risk that the securities may fall in value from the insider to the lender. In these circumstances, the transaction should be transparent to the market.

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

9.5. Exemption for certain investment funds

The exemption in paragraph 9.7(f) of the Regulation is limited to situations where securities of the reporting issuer do not form a material component of the investment fund's market value. In determining materiality, similar considerations to those involved in the concepts of material fact and material change would apply.

PART 10 CONTRAVENTION OF INSIDER REPORTING REQUIREMENTS

10.1. Contravention of insider reporting requirements

(1) It is an offence to fail to file an insider report in accordance with the filing deadlines prescribed by the Regulation or to submit information in an insider report that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

(2) A failure to file an insider report in a timely manner or the filing of an insider report that contains information that is materially misleading may result in one or more of the following

- *the imposition of a late filing fee;*

- *the reporting insider being identified as a late filer on a public database of late filers maintained by certain securities regulators;*

- *the issuance of a cease trade order that prohibits the reporting insider from directly or indirectly trading in or acquiring securities or related financial instruments of the applicable reporting issuer or any reporting issuer until the failure to file is corrected or a specified period of time has elapsed; or*

- *in appropriate circumstances, enforcement proceedings.*

(3) Members of the CSA may also consider information relating to wilful or repeated non-compliance by directors and executive officers of a reporting issuer with their insider reporting obligations in the context of a prospectus review or continuous disclosure review, since this may raise questions relating to the integrity of the insiders and the adequacy of the issuer's policies and procedures relating to insider reporting and insider trading.

PART 11 INSIDER TRADING

11.1. Non-reporting insiders

Insiders who are not reporting insiders are still subject to the provisions in Canadian securities legislation prohibiting improper insider trading.

11.2. Written disclosure policies

National Policy 51-201 Disclosure Standards (Decision 2002-C-0244, 2002-07-09) outlines detailed best practices for issuers for disclosure and information containment and provides interpretative guidance of insider trading laws. We recommend that issuers adopt written disclosure policies to assist directors, officers, employees and other representatives in discharging timely disclosure obligations. Written disclosure policies also should provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading based on inside information. Adopting the CSA best practices may assist issuers to ensure that they take all reasonable steps to contain inside information.

11.3. Insider Lists

Reporting issuers may also wish to consider preparing and periodically updating a list of the persons working for them or their affiliates who have access to material facts or material changes concerning the reporting issuer before those facts or changes are generally disclosed. This type of list may allow reporting issuers to control the flow of undisclosed information. The CSA may request additional information from time to time, including asking the reporting issuer to prepare and provide a list of insiders and reporting insiders, in the context of an insider reporting review.

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