

**PROPOSED COMPANION POLICY 55-101CP
TO NATIONAL INSTRUMENT 55-101
EXEMPTION FROM CERTAIN INSIDER
REPORTING REQUIREMENTS**

PART 1 PURPOSE

Purpose - The purpose of this Companion Policy is to set out the views of the Canadian securities regulatory authorities on various matters relating to National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* (the “Instrument”).

PART 2 DEFINITIONS

2.1 Definitions - The definition of automatic securities purchase plan in the Instrument includes employee share purchase plans, stock dividend plans and dividend or interest reinvestment plans so long as the criteria in the definition are met.

PART 3 SCOPE OF EXEMPTIONS

3.1 Scope of Exemptions - The exemptions under the Instrument are only exemptions from the insider reporting requirement and are not exemptions from the provisions in Canadian securities legislation imposing liability for improper insider trading.

PART 4 EXEMPTION FOR CERTAIN DIRECTORS AND SENIOR OFFICERS

4.1 Exemption for Certain Directors

- (1) Section 2.1 of the Instrument contains an exemption from the insider reporting requirement for a director of a subsidiary of a reporting issuer in respect of securities of the reporting issuer if the director
 - (a) 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;
 - (b) is not a director of a major subsidiary; and
 - (c) is not an insider of the reporting issuer in a capacity other than as a director of the subsidiary.

- (2) The exemption in section 2.1 is not available for directors of a reporting issuer or for directors of a subsidiary of a reporting issuer that is a “major subsidiary” of the reporting issuer. In the case of directors of a reporting issuer, this is because such individuals, by virtue of being directors, routinely 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. In view of the significance of a major subsidiary of a reporting issuer to the reporting issuer, we believe that it is appropriate to treat directors of such subsidiaries in an analogous manner to directors of the reporting issuer.

In the case of directors of subsidiaries of a reporting issuer that are not major subsidiaries of the reporting issuer, although such individuals, by virtue of being directors of the subsidiary, routinely have access to material undisclosed information about the subsidiary, such information generally will not constitute material undisclosed information about the reporting issuer since the subsidiary is not a major subsidiary of the reporting issuer.

- (3) Under Canadian securities legislation, if a reporting issuer (the first reporting issuer) is itself an insider of another reporting issuer (the second reporting issuer), directors and senior officers of the first reporting issuer are insiders of the second reporting issuer. In the Instrument, the second reporting issuer is referred to as an “investment issuer”. Section 2.2 of the Instrument contains an exemption for directors of a subsidiary of a reporting issuer that is not a major subsidiary of the reporting issuer in respect of trades in securities of an investment issuer of the reporting issuer, subject to certain conditions.

4.2 Exemption for Certain Senior Officers

- (1) Section 2.3 of the Instrument contains an 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 non-executive officer criteria):
- (a) 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;
 - (b) 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

(c) the individual is not an insider of the reporting issuer in a capacity other than as a senior officer of the reporting issuer or a subsidiary of the reporting issuer.

- (2) The exemption contained in section 2.3 of the Instrument is available to senior officers of a reporting issuer as well as to senior officers of any subsidiary of the reporting issuer, regardless of size, so long as such individuals meet the non-executive officer criteria contained in the exemption. Accordingly the scope of the exemption is somewhat broader than the scope of the exemption contained in section 2.1 for directors of subsidiaries that are not major subsidiaries.

In the case of directors of a reporting issuer, and directors of a major subsidiary of the reporting issuer, we believe that such individuals, by virtue of being directors, routinely 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. Accordingly, the rationale for the exemption from the insider reporting requirement does not exist for these individuals.

In the case of individuals who are “senior officers”, however, we accept that many such individuals do not routinely 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. For example, the term “senior officer” generally includes an individual who holds the title of “vice-president”. We recognize that, in recent years, it has become industry practice, particularly in the financial services sector, for issuers to grant the title of “vice-president” to certain employees primarily for marketing purposes. In many cases, the title of “vice-president” does not denote a senior officer function, and such individuals do not routinely have access to material undisclosed information prior to general disclosure. Accordingly, we accept that it is not necessary to require all persons who hold the title of “vice-presidents” to file insider reports.

- (3) Similar to the exemption contained in section 2.2 of the Instrument, section 2.4 contains an exemption for senior officers of a reporting issuer, as well as to senior officers of a subsidiary of the reporting issuer, in respect of trades in securities of an investment issuer of the reporting issuer, subject to certain conditions.

PART 5 LISTS OF INSIDERS

- (1) Section 4.1 of the Instrument requires a reporting issuer to prepare and maintain
 - (a) a list of insiders of the reporting issuer exempted from the insider reporting requirement by a provision of the Instrument,
 - (b) a list of insiders of the reporting issuer not exempted by a provision of the Instrument, and
 - (c) reasonable policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer.
- (2) As an alternative to complying with the requirement to prepare and maintain the lists described in subparagraphs (a) and (b) of section 4.1 of the Instrument, a reporting issuer may file an undertaking with the regulator or securities regulatory authority instead. The undertaking requires the reporting issuer to make available to the regulator or securities regulatory authority, promptly upon request, a list containing the information described in subparagraphs (a) and (b) as at the time of the request. The principal rationale behind the requirement to prepare a list of exempt insiders and a list of non-exempt insiders is to allow for an independent means to verify whether individuals who are relying on an exemption in fact are entitled to rely on the exemption. If a reporting issuer determines that it is not necessary to prepare and maintain such lists as part of its own policies and procedures relating to the monitoring and restricting the trading activities of its insiders, and is able to prepare and make available such lists promptly upon request, the rationale behind the list requirement would be satisfied.
- (3) Subparagraph 4.1(c) of the Instrument requires a reporting issuer to prepare and maintain reasonable written policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons with access to material undisclosed information relating to the reporting issuer or to an investment issuer of the reporting issuer. The Instrument does not seek to prescribe the content of such policies and procedures. It merely requires that such policies and procedures exist and that they be reasonable.

The CSA have articulated in National Policy 51-201 *Disclosure Standards* detailed best practices for issuers for disclosure and information containment and have provided a thorough interpretation of insider trading laws. The CSA recommend that issuers adopt written disclosure policies to assist directors,

officers and 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 on inside information. The CSA best practices offer guidance on broad issues including disclosure of material changes, timely disclosure, selective disclosure, materiality, maintenance of confidentiality, rumours and the role of analysts' reports. In addition, guidance is offered on such specifics as responsibility for electronic communications, forward-looking information, news releases, use of the Internet and conference calls. We believe that adopting the CSA best practices as a standard for issuers would assist issuers to ensure that they take all reasonable steps to contain inside information.

PART 6 AUTOMATIC SECURITIES PURCHASE PLANS

6.1 Automatic Securities Purchase Plans

- (1) Section 5.1 of the Instrument provides an exemption from the insider reporting requirement for acquisitions by a director or senior officer of a reporting issuer or of a subsidiary of a reporting issuer of securities of the reporting issuer pursuant to an automatic securities purchase plan.
- (2) The exemption does not apply to securities acquired under a cash payment option of a dividend or interest reinvestment plan, a "lump-sum" provision of a share purchase plan, or a similar provision under a stock option plan.
- (3) A person relying on this exemption who does not dispose of or transfer securities, other than securities which have been disposed of or transferred as part of a "specified disposition of securities" (discussed below), which were acquired under an automatic securities purchase plan during the year must file a report disclosing all acquisitions under the automatic securities purchase plan annually no later than 90 days after the end of the calendar year. If a person who relies on the exemption does dispose of or transfer securities acquired under an automatic securities purchase plan, other than securities which have been disposed of or transferred as part of a specified disposition of securities, the person must file a report disclosing the acquisition of those securities as contemplated by clause 5.3(a) of the Instrument.
- (4) Section 5.3 of the Instrument requires an insider who relies on the exemption for securities acquired under an automatic securities purchase plan to file an alternative report for *each* acquisition of securities acquired under the plan. We recognize that, in the case of securities acquired under an automatic securities purchase plan, the time and effort required to report each transaction *as a separate transaction* may outweigh the benefits to the market of having this

detailed information. We believe that it is acceptable for insiders to report on a yearly basis aggregate acquisitions (with an average unit price) of the same securities through their automatic share purchase plans. Accordingly, in complying with the alternative reporting requirement contained in section 5.3 of the Instrument, an insider may report the acquisitions on either a transaction-by-transaction basis or in “acceptable summary form”. The term “acceptable summary form” is defined to mean a report that indicates the total number of securities of the *same type* (e.g. common shares) acquired under all automatic share purchase plans for the calendar year as a single transaction using December 31 of the relevant year as the date of the transaction, and providing an average unit price (if available). Similarly, an insider may report all specified dispositions of securities in a calendar year in acceptable summary form.

- (5) This section does not relieve a director or senior officer from his or her insider reporting obligations in respect of dispositions or transfers of securities, except where the disposition or transfer is a “specified disposition of securities”.

6.2 Specified Dispositions of Securities

- (1) A disposition or transfer of securities acquired under an automatic securities purchase plan is a “specified disposition of securities” if
 - (a) the disposition or transfer is incidental to the operation of the automatic securities purchase plan and does not involve a discrete investment decision by the director or senior officer; or
 - (b) the disposition or transfer is made to satisfy a tax withholding obligation arising from the distribution of securities under the automatic securities purchase plan and the requirements contained in clauses 5.4(b)(i) or (ii) are satisfied.
- (2) In the case of dispositions or transfers described in subsection 5.4(a) of the Instrument, namely a disposition or transfer that is incidental to the operation of the automatic securities purchase plan and that does not involve a discrete investment decision by the director or senior officer, we believe that such dispositions or transfers do not alter the policy rationale for deferred reporting of the acquisitions of securities acquired under an automatic securities purchase plan since such dispositions necessarily do not involve a discrete investment decision on the part of the participant.
- (3) The term “discrete investment decision” generally refers to a decision to alter the nature or the extent of a person’s investment position in an issuer or other form of investment. The term is best illustrated by way of example. In the case of 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 an insider, we believe that this information should be communicated to the market in a timely fashion, since this decision may convey information that other market participants may consider relevant to their own investing decisions. A reasonable investor may conclude, for example, that the decision on the part of the insider to exercise the stock options now reflects a belief on the part of the insider that the price of the underlying securities has peaked.

- (4) Under some types of automatic securities purchase plans, certain dispositions of securities may occur in the course of the ordinary operation of the plan, and may not reflect a discrete investment decision on the part of the participant. For example, an automatic securities purchase plan may involve a convertible or exchangeable security. The use of an exchangeable security may negate the benefit of the insider reporting exemption for acquisitions under an automatic securities purchase plan because, although the acquisition of securities is exempt, the disposition of the convertible or exchangeable security is not. For this reason, the automatic securities purchase plan exemption will now allow for specified dispositions that meet this criteria in subsection 5.4(a).
- (5) The definition of “specified disposition of securities” also contemplates a disposition made to satisfy a tax withholding obligation arising from the acquisition of securities under an automatic securities purchase plan in certain circumstances. Under some types of automatic securities purchase plans, it is not uncommon for an issuer or plan administrator to 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. Generally, the plan participant is required to 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. Where a plan participant elects to dispose of a portion of the securities to be acquired under an automatic securities purchase plan to fund a tax withholding obligation, the plan participant will lose the benefit of the automatic securities purchase plan exemption, since the participant will be required to file a report in respect of the disposition at the time of the acquisition.
- (6) Although we are of the view that the election as to how a tax withholding obligation will be funded does contain an element of a discrete investment decision, we are satisfied that, where the election occurs sufficiently in advance of the actual distribution 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” if

- (a) the participant has elected that the tax withholding obligation will be satisfied through a disposition of securities, has communicated this election to the reporting issuer or the automatic securities purchase plan administrator not less than 30 days prior to the disposition and this election is irrevocable as of the 30th day before the disposition; or
- (b) the participant has not communicated an election to the reporting issuer or the automatic securities purchase plan administrator and, in accordance with the terms of the automatic securities purchase plan, the reporting issuer or the automatic securities purchase plan administrator is required to sell securities automatically to satisfy the tax withholding obligation.

6.3 Reporting Requirements

- (1) A director or senior officer must file a report disclosing dispositions or transfers of securities that are not specified dispositions of securities, and any acquisitions of securities which are not exempt from the insider reporting obligation, within the time periods prescribed by securities legislation. The report for such acquisitions or dispositions need not include acquisitions under an automatic securities purchase plan unless clause 5.3(a) of the Instrument requires disclosure of those acquisitions.
- (2) Clause 5.3(a) requires reports to be filed disclosing acquisitions of any securities under an automatic securities purchase plan which are disposed of or transferred, other than pursuant to a specified disposition or transfer of securities. Accordingly, in these circumstances, if securities acquired under an automatic securities purchase plan are disposed of or transferred, other than pursuant to a specified disposition or transfer of securities, and the acquisitions of these securities have not been previously disclosed in a report, the insider report will disclose, for each acquisition of securities which are disposed of or transferred, the particulars relating to the date of acquisition of such securities, the number of securities acquired and the acquisition price of such securities. The report would also disclose, for each disposition or transfer, the related particulars for each such disposition or transfer of securities. It would be prudent practice for the director or senior officer to indicate in such insider report, by way of the "Remarks" section, or otherwise, that he or she participates in an automatic securities purchase plan and that not all purchases

under that plan have been included in the report.

- (3) The annual report should include, for acquisitions of securities under a plan not previously reported, disclosure for each acquisition, showing the date of acquisition, the number of securities acquired, and the unit price for each acquisition. The annual report should include comparable information for each specified disposition of securities that has not been reported.
- (4) The annual report that an insider files for acquisitions and specified dispositions under the automatic securities purchase plan in accordance with clause 5.3(b) of the Instrument will reconcile the acquisitions under the plan with other acquisitions or dispositions by the director or senior officer so that the report provides an accurate listing of the director's or senior officer's total holdings. As required by securities legislation, the report filed by the insider must differentiate between securities held directly and indirectly and must indicate the registered holder if securities are held indirectly. In the case of securities acquired pursuant to a plan, the registered holder is often a trustee or plan administrator.

6.4 Exemption to the Alternative Reporting Requirement

- (1) If a director or senior officer relies on the automatic securities purchase plan exemption contained in section 5.1 of the Instrument, the director or senior officer becomes subject, as a consequence of such reliance, to the alternate reporting requirement under section 5.3 to file one or more reports within 90 days of the end of the calendar year (the alternative reporting requirement).
- (2) The principal rationale underlying the alternative reporting requirement is to ensure that insiders 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 reporting requirement becomes due, we are of the view that it is not necessary to ensure that the alternative report is filed. Accordingly, section 5.5 of the Instrument contains an exemption in this regard.

6.5 Design and Administration of Plans - Part 5 of the Instrument provides a limited exemption from the insider reporting requirement only in circumstances in which an insider, by virtue of participation in an automatic securities purchase plan, 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 which is consistent with this limitation.

PART 7 EXISTING EXEMPTIONS

- 7.1 Existing Exemptions** - Insiders can continue to rely on orders of Canadian securities regulatory authorities, subject to their terms and unless the orders provide otherwise, which exempt certain insiders, on conditions, from all or part of the insider reporting requirement, despite implementation of the Instrument.