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Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

Notice of Proposed Amendment to and Restatement of

National Instrument 55-101 and Companion Policy 55-101CP

Insider Reporting Exemptions

Introduction

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

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

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

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

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

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

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

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.sfsc.gov.sk.ca
- www.msc.gov.mb.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca

- www.gov.ns.ca/nssc/

Ministerial approvals

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

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

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

Substance and purpose

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

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

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

- enhanced deterrence against unlawful insider trading, since the insider reporting obligation will now focus more closely on insiders who routinely have access to material undisclosed information;

- increased market efficiency, since the trading activities of “true” insiders may be obscured under the current system by the large volume of insider reports filed by persons who are statutory insiders but who do not routinely have access to material undisclosed information; and

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

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

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

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

- a disposition that is made to satisfy a tax withholding obligation arising from the distribution of securities under the plan and that results from an irrevocable election by the senior officer or director to fund the tax withholding obligation through a disposition of securities not less than 30 days prior to the date of the disposition.

- The exemption in the current instrument relating to acquisitions of securities under an automatic securities purchase plan has also been amended to provide that the alternative reporting requirement that allows for a consolidated report to be filed within 90 days of the end of the calendar year does not apply if, at the time the alternative report becomes due, the individual is no longer subject to an insider reporting requirement. This situation may arise, for example, in the following circumstances:

    - the individual is no longer an insider at the time the alternative filing requirement becomes due; or

    - the individual has become entitled to rely on an exemption contained in an exemptive relief decision or Canadian securities legislation (such as, for example, an exemption contained in NI 55-101).

Summary of written comments received by the CSA

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

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

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

Changes to the proposed instrument and policy

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

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

Local Matters

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

Questions

Please refer your questions to any of:

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DATE: February 11, 2005

Appendix A
Summary of Comments & Responses

Comment letters were received from the following commenters:

- Osler Hoskin & Harcourt (Oslers) (Comment letter dated July 30, 2004)
- Ontario Teachers' Pension Plan (Teachers') (Comment letter dated August 12, 2004)
- Talisman Energy Inc. (Talisman) (Comment letter dated August 12, 2004)
- Canadian Bankers Association (the CBA) (Comment letter dated August 13, 2004)

We would like to thank the commenters for taking the time to provide comments on the draft materials. We have carefully considered these comments and have provided summaries of the comments and our responses in the following table.

1.	General support for the initiative (Teachers', Talisman and the CBA)	Three of the commenters expressed general support for the initiative, although the support was qualified by reference to the need to address matters raised in the comments.	We acknowledge the support of the commenters and thank them for their comments. We have carefully considered their comments, and amended the Proposed Materials where we believe it appropriate.
2.	General – Definition of "insider" under Canadian securities legislation (CBA)	Rather than distinguishing between reporting and non-reporting insiders, we suggest that the criteria for reporting insiders should be brought into the basic definition of "insider". Regulators have acknowledged that the definition of "insider" in Canadian securities legislation related to developments in the 1960's, at a time when the title "vice-president" generally denoted a senior officer function. The regulators have recognized that it is no longer appropriate to require all persons who are vice-presidents to file insider reports. For the same reasons, it is no longer appropriate to require all vice-presidents to be defined as insiders. We therefore recommend that the regulators take the next logical step, to change the basic definition of "insider" in securities legislation so that the definition can be based on the executive officer definition and non-executive officer exemption criteria.	We agree with this comment and note that such an amendment is contemplated in the Uniform Securities Legislation project. See, for example, the definition of "senior officer" in the USL Consultation Draft that was published in December 2003. Pending the adoption of necessary legislative amendments in each jurisdiction, however, we have decided to proceed with the implementation of the non-executive officer exemption in NI 55-101 as we believe that this change will improve the effectiveness of the insider reporting system and help reduce the regulatory burden associated with insider reporting. In British Columbia's new *Securities Act* (not yet in force), senior officers of an issuer and directors or senior officers of a subsidiary or of a securityholder with more than 10% of the securities of the issuer are required to file insider reports only if the director or senior officer's responsibilities routinely provide the individual with access to inside information about the issuer.
3.	Section 1.1 Definitions "acceptable summary form" (CBA)	For the annual reporting of acquisitions (and specified dispositions) in automatic purchase plans, we would suggest that the wording be amended slightly to allow for the reporting of all plans together, or individual plans in summary form. A number of issuers offer securities categories that identify certain plans, to facilitate reporting based on the plan statements. Some insiders find it easier to keep track of what has been reported by comparing totals to the plan statements. Others prefer to	We have amended the definition of "acceptable summary form" to allow for reports to be made on a plan-by-plan basis or on an aggregate basis combining the total of all plans.

		combine the annual totals for all the plans or, plan-by-plan, into the common share category. We believe that it is important to make the reporting process manageable for the individual, so long as the required information is reported in a standard and clear manner. Acknowledgement of this currently accepted flexibility, we believe, can be accomplished by deleting the word "all" from subparagraph (a) of the definition of "acceptable summary form", or by including a comment in the Companion Policy.	
4.	Section 1.1 Definitions "investment issuer" (CBA)	A comparison of some MRRS decisions that have been issued subsequent to CSA Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* and the proposed amendments to NI 55-101, suggests that the relief under the proposed amendment would be more restrictive, given the proposed definition of "investment issuer". The difference lies in the exclusion of subsidiaries in subparagraph (b) of the definition of "investment issuer". We recommend that subparagraph (b) be deleted. … It is not consistent, in our view, to tie the reporting requirement to the status of whether that investment issuer is a subsidiary of the bank or not, as distinct from, and in addition to the fundamental exemption criteria that apply for all other securities. MRRS decisions that have been issued pursuant to CSA Staff Notice 55-306 rest on exemption criteria that are based on officer function and access to information, and do not distinguish between types of investment issuers. The language of the NI 55-101 amendment would, in our mind, require revising the existing instructions to all of these people and would result in unnecessary reporting, which should continue to be exempt.	We have amended the definition of "investment issuer" to delete the restriction in subparagraph (b) relating to subsidiaries. We agree that the exclusion of subsidiaries in the definition of "investment issuer" is unnecessary, since the objectives are met by the basic exemption criteria, which would exclude the exemption of any officer who receives or has access to undisclosed material information about the particular subsidiary investment issuer. We have added language to the Proposed Policy to clarify that the reference to "material facts or material changes concerning the investment issuer" includes 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 insider issuer level (i.e., the parent issuer) 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 senior officer of the parent

		We believe that the exclusion of subsidiaries in the definition of "investment issuer" is also unnecessary, since the objectives are met by the basic exemption criteria, which would exclude the exemption of any officer who receives or has access to undisclosed material information about the particular subsidiary investment issuer.	reporting 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.
5.	Section 1.1 Definitions "major subsidiary" (Oslers)	The definition of "major subsidiary" may be overinclusive for larger issuers with international operations. Such issuers may organize certain subsidiaries solely for the purposes of handling international sales and other subsidiaries solely for purposes of holding an interest in assets. Such subsidiaries may technically fall within the definition of "major subsidiary" even though the subsidiary is not material to the issuer in terms of being a principal business unit, division or function of the reporting issuer. You should consider whether to modify the definition of "major subsidiary" to address those "major subsidiaries" which do not constitute a principal business unit, division or function of the reporting issuer.	We have not amended the Proposed Instrument in response to this comment as we believe that the proposed amendment would have the effect of significantly narrowing the scope of the definition of "major subsidiary". Under the current definition of "major subsidiary", a subsidiary of a reporting issuer will be a "major subsidiary" if • the assets of the subsidiary represent 10% or more of the assets of the reporting issuer on a consolidated basis, or • the revenues of the subsidiary represent 10% or more of the revenues of the reporting issuer on a consolidated basis. Generally we would expect that a subsidiary of a reporting issuer that crosses either of these 10% thresholds will be material to the reporting issuer regardless of whether the subsidiary "is … material to the issuer in terms of being a principal business unit, division or function of the reporting issuer". We also believe that a test based on consolidated asset and consolidated revenue thresholds is easier to apply than a test based on whether a subsidiary constitutes "a principal business unit, division or function of the reporting issuer".

			Where an issuer has a subsidiary that crosses a 10% threshold, but the issuer can demonstrate that the subsidiary's performance is not material to the issuer, the CSA may be prepared to grant exemptive relief on an application basis.
6.	Section 1.1 Definitions "major subsidiary" (Oslers)	For subsidiaries of issuers with worldwide operations it is common to appoint individuals as officers or directors to meet local legal or residency requirements, even though such individuals do not have substantive authority. (For example, a Canadian subsidiary of a U.S. company may appoint a resident Canadian individual as a director to meet residency requirements under Canadian corporate legislation, but remove the individual's powers and liabilities through a unanimous shareholder declaration.) There should be an exemption for directors even of "major subsidiaries" where the powers of the director have been curtailed by statute and agreement.	We have not amended the Proposed Instrument in response to this comment. Where an individual has been appointed as a director of a major subsidiary but does not have any substantive authority or access to material undisclosed information in the ordinary course, the CSA may be prepared to grant exemptive relief on an application basis.
7.	Section 2.3 -- Reporting Exemption (Certain Senior Officers) Individuals who hold multiple positions (Oslers)	It is common for senior officers of an issuer to act as directors of subsidiaries of the issuer. The exemptions do not appear to be available to senior officers who would be exempt from the insider reporting requirements but for the fact that they also act as directors of a subsidiary of the reporting issuer, even if the subsidiaries for which they act as directors are not "major subsidiaries". This is because the condition under subsection (c) of Sections 2.1, 2.2 and 2.3 cannot be met by individuals who hold multiple positions. There is no policy reason for this and we suggest that the exemptions be available to those individuals as well.	We agree with this comment and have amended the condition in sections 2.1, 2.2 and 2.3 to address the situation of multiple positions.
8.	Sections 2.2 and 2.4 (Teachers)	Section 2.4 of NI 55-101 provides an exemption from the insider reporting requirement only for a senior officer of "a reporting issuer or a subsidiary of the reporting issuer" in respect of securities of an "investment issuer" (a second reporting issuer that the first reporting issuer is an insider of). We believe that section 2.4 should be extended so that a senior officer of a company that is not a reporting issuer would be exempt from the	We agree with this comment and have amended the definition of "investment issuer" and the exemption for trades in securities of an investment issuer accordingly.

		insider reporting requirement in respect of securities of an "investment issuer", so long as that senior officer meets conditions equivalent to those set out in subsections 2.4(b) and (c). ***We do not believe that there is a reasonable basis upon which an exemption of this type should be available for the senior officers of a company that is a reporting issuer, but not also available for the senior officers of a company that is not a reporting issuer.***	
9.	Subsection 4.1(a) – Insider Lists and Policies (CBA)	In a large institution, we question the utility of the [even infrequent] delivery of lists of hundreds of exempt vice-presidents when a valid process is in place to determine the reporting insiders on the basis of the criteria. We note that the compilation can be labour intensive due to the global nature of our members' operations and due to differences in personnel data support systems and variations in local/translated titles. We question the point of labelling and listing people who fail to meet the criteria for reporting. We, therefore, recommend the removal of the requirement to file a list of all insiders of the reporting issuer who are exempted from the insider reporting requirement.	The Proposed Instrument does not contain a requirement to file (or otherwise make public) a list of all insiders of the reporting issuer who are exempted from the insider reporting requirement. This represents a significant change from the approach described in CSA Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents* and reflects the terms of recent exemptive relief decisions for such relief. The Proposed Instrument does require (as a condition of the exemption being available) that the insider notify the reporting issuer that the insider intends to rely on the exemption, and that the reporting issuer confirm that it will maintain a list of insiders of the reporting issuer exempted under NI 55-101. However, the current version of NI 55-101 contains a similar requirement to maintain a list of exempted insiders in s. 4.1.

			Accordingly, this requirement does not represent a change from the current version of NI 55-101. The requirement to maintain a list of insiders who are relying on an exemption from the insider reporting requirements is necessary in order to preserve an independent ability to monitor whether the insiders who are relying on the exemption are in fact entitled to rely on the exemption. The requirement to maintain a list provides a practical means by which the reporting issuer, and the securities regulatory authorities, can check to see whether such reliance is appropriate. We do not believe that this requirement should prove onerous for a public company, particularly a company that is large enough to have hundreds of vice-presidents who would otherwise be eligible for the exemption. A company could, for example, simply advise its insiders that • they may be entitled to rely on an exemption in NI 55-101 from the insider reporting requirements under Canadian securities law, and • if they wish to rely on this exemption, they should notify a designated contact person who will maintain a list of people relying on the exemption. We also note that this requirement to maintain a list should be substantially less onerous than the current requirement that all such insiders file

			insider reports.
10.	Subsection 4.1(a) – List of exempt insiders (CBA)	As well, we have previously brought to your attention that there are related privacy legislation considerations in connection with the contemplated lists. A number of MRRS decisions recognize this by providing that the issuer will make a list available to the regulators upon request "to the extent permitted by law". We request inclusion of the same language in the National Instrument.	We do not believe it is necessary or appropriate to include the language "to the extent permitted by law" in the terms of the exemption for the following reasons. First, as noted above, the current version of NI 55-101 contains a similar requirement in s. 4.1. Accordingly, the requirement to maintain a list of exempt insiders in the Proposed Instrument does not represent a change from the current version of NI 55-101. Secondly, we note that the condition relates to an exemption from the insider reporting requirement. There is no obligation for any insider to rely on this exemption. If an insider wishes to rely on this exemption, we believe it is reasonable to require, as a condition to the exemption being available, that the insider notify the issuer and if necessary provide a consent to the issuer. In this way, the issuer can maintain a list of its insiders who are relying on the exemption. We believe that a list requirement is reasonable as it provides for a practical means by which the reporting issuer, or the securities regulatory authorities, can review whether reliance by the insider on the exemption is appropriate.
11.	Subsection 4.1(c) – Reasonable policies and procedures relating to insider trading	Subsection 4.1(c) requires that a reporting issuer maintain reasonable written policies and procedures relating to monitoring and	We do not agree with the suggestion that it is a “best practice” for reporting issuers to have an insider trading policy. We believe that all

	(Oslers)	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. We agree that it is best practice for issuers to have an insider trading policy; however, the Proposed Instrument is not the appropriate place to introduce a requirement that all reporting issuers prepare and maintain such policies. The requirement in subsection 4.1(c) should be a precondition only to relying on the Proposed Instrument, as it is currently for staff to support applications for relief from insider reporting requirements (CSA Staff Notice 55-306 – *Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents*), and not a positive obligation imposed upon all reporting issuers regardless of whether or not they rely on the Proposed Instrument. We suggest, therefore, that the introductory language to section 4.1 be redrafted as follows to clarify this: "Subject to section 4.2, a reporting issuer which wishes to rely on this Instrument shall prepare and maintain".	reporting issuers should have some form of insider trading policy. However, we accept that an exemptions instrument is not the appropriate place to introduce a requirement that all reporting issuers prepare and maintain such policies regardless of whether or not they (or their insiders) rely on the Proposed Instrument. Accordingly, we agree with the comment that the requirement to establish an insider trading policy should be a precondition only to relying on the Proposed Instrument. The exemptions in Parts 2 and 3 of the Proposed Instrument have been redrafted to clarify that they are subject to the preconditions in Part 4.
12.	Subsection 4.1(c) – Reasonable policies and procedures relating to insider trading (Talisman)	Talisman is very concerned with one aspect of proposed NI 55-101, s. 4.1(c), which would impose a new legal requirement on reporting issuers to monitor and restrict the trading activities of insiders and other persons with access to material undisclosed information.	We have amended the Proposed Instrument to clarify that the requirement to establish and maintain policies and procedures relating to insider trading does not represent an independent legal requirement for reporting issuers to monitor or restrict the trading of insiders. Rather, it is a precondition to the availability of the exemptions contained in Parts 2 and 3 of the Proposed Instrument.

		Currently, there is no legal requirement for reporting issuers in Canada to either monitor or restrict the trading of insiders. Section 6.11 of National Policy 51-201 *Disclosure Standards* currently recommends as a "best practice" that reporting issuers "adopt an insider trading policy that provides for a senior officer to approve and monitor the trading activity of all of our insiders, officers and senior employees". Talisman submits that the "best practices" approach taken by NP 51-201 is more appropriate than the legally mandated approach taken in the proposed amendments to NI 55-101 for the reasons set forth below. Talisman submits that the following considerations support a continuation of the "best practices" approach: 1. Such an approach is more consistent with the general approach to corporate governance taken by Canadian securities regulators; 2. Such an approach would maintain more consistency between Canadian and US securities laws, as US securities laws do not require registrants to maintain policies that monitor and restrict insider trading; and 3. Such an approach would permit reporting issuers to craft policies and procedures that best fit their organizations, without risk of second-guessing by securities regulators as to whether their policies are "reasonable" or not.	This precondition mirrors a similar precondition described in CSA Staff Notice 55-306 *Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents*. In the context of the staff notice, we requested a copy of the issuer's policies and procedures as part of the application as we wanted to ensure that the issuer had in place a minimally acceptable set of policies and procedures relating to insider trading before recommending this relief. We believe this is important because several of the new exemptions, and in particular the "non-executive officer exemption", represent a shift from a *title-based* regime – all persons who hold a stipulated title, such as "vice-president", must report – to more of a functional or principles-based regime – only those persons who hold the stipulated title *and who have access to material undisclosed information in the ordinary course* must report. In our view, where the test is tied to an assessment of the individual's function and access to material undisclosed information, there is a greater need for an issuer to have appropriate policies and procedures in place. The issuer should have a view, for example, as to what information is material and which of its senior officers routinely have access to material undisclosed information and should be filing insider reports. As explained in the Proposed Policy, the Proposed 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 include, among other things, a requirement that the issuer maintain the lists described in subparagraphs 4.1(b)(i) and (ii) or file an undertaking in relation to such lists. We have added additional language to the Proposed Policy to clarify that an issuer's policies and procedures need not necessarily be consistent with National Policy 51-201 *Disclosure Standards* in order for the exemptions in Parts 2 and 3 of the Instrument to be available.

13.	Section 5.4 -- "Specified Disposition of Securities" General Support (CBA)	We support the inclusion of the specified disposition amendment.	We thank the commenter for the support.
14.	Section 5.4 -- "Specified Disposition of Securities" Meaning of the phrase "discrete investment decision" (Oslers)	The meaning of the phrase "discrete investment decision" is very unclear and the guidance in the companion policy is limited. It would be helpful to confirm, for example, that the decision to enrol in an automatic securities purchase plan is not a "discrete investment decision". In addition, most automatic securities purchase plans enable the participant to give revised instructions from time to time respecting the level of his or her participation in the plan. It would be helpful to confirm that a participant does not, by giving a revised instruction affecting the individual's level of ongoing participation in the plan, thereby make a "discrete investment decision".	We have added additional language to the Companion Policy to clarify the concept of "discrete investment decision". The term "discrete investment decision" 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 represent a discrete investment decision (other than the initial decision to enter into the plan in question). The reference to "discrete investment decision" in s. 5.4 is intended to reflect a principles-based limitation on the exemption for permitted dispositions under an automatic securities purchase plan. Accordingly, in interpreting this term, you should consider the principles underlying the insider reporting requirement – deterring insiders from profiting from material undisclosed information and signalling insider views as to the prospects of an issuer -- and the rationale for the exemptions from this requirement. In our view, the decision to *enroll* in an automatic securities purchase plan *does* involve a discrete investment decision. For example, a decision to participate in a share purchase plan under which a participant contributes 10% of each paycheque for the purchase of securities represents a decision to invest 10% of the participant's salary in securities of the issuer. Each subsequent purchase in accordance with the initial instructions does not represent a *new* investment decision. However, a decision to revise the instructions or terminate participation in the plan generally will represent a new investment decision (or an alteration of the original investment decision).

			This is reflected in s. 4.2 of the current version (and section 6.5 of the amended version) of the Companion Policy. **4.2 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. Accordingly, where a plan allows a participant to give revised instructions from time to time respecting the level of his or her participation in the plan, the issuer should design and administer the plan in a manner that ensures the insider is not able to make "discrete investment decisions".

Appendix B

NATIONAL INSTRUMENT 55-101
~~EXEMPTION FROM CERTAIN~~ INSIDER REPORTING ~~REQUIREMENTS~~EXEMPTIONS

PART 1 DEFINITIONS

1.1 Definitions - In this Instrument

"acceptable summary form", in relation to the alternative form of insider report described in section 5.3, means an insider report that discloses as a single transaction, using December 31 of the relevant year as the date of the transaction, and providing an average unit price,

(a) the total number of securities of the same type acquired under ~~all~~an automatic ~~share~~securities purchase plan, or under all such plans, for the calendar year, and

(b) the total number of securities of the same type disposed of under all specified dispositions of securities under an automatic securities purchase plan, or under all such plans, for the calendar year~~.~~;

"automatic securities purchase plan" means a dividend or interest reinvestment plan, a stock dividend plan or any other plan of a reporting issuer or of a subsidiary of a reporting issuer to facilitate the acquisition of securities of the reporting issuer if the timing of acquisitions of securities, the number of securities which may be acquired under the plan by a director or senior officer of the reporting issuer or of the subsidiary of the reporting issuer and the price payable for the securities are established by written formula or criteria set out in a plan document;

"cash payment option" means a provision in a dividend or interest reinvestment plan under which a participant is permitted to make cash payments to purchase from the issuer, or from an administrator of the issuer, securities of the issuer's own issue, in addition to the securities

(a) purchased using the amount of the dividend, interest or distribution payable to or for the account of the participant; or

(b) acquired as a stock dividend or other distribution out of earnings or surplus;

"dividend or interest reinvestment plan" means an arrangement under which a holder of securities of an issuer is permitted to direct that the dividends, interest or distributions paid on the securities be applied to the purchase, from the issuer or an administrator of the issuer, of securities of the issuer's own issue;

"ineligible insider" in relation to a reporting issuer means

(a) an individual performing the functions of the chief executive officer, the chief operating officer or the chief financial officer for the reporting issuer;

(b) a director of the reporting issuer;

(c) a director of a major subsidiary of the reporting issuer;

(d) a senior officer in charge of a principal business unit, division or function of i) the reporting issuer or ii) a major subsidiary of the reporting issuer;

(e) other than in Québec, a person that has direct or indirect beneficial ownership of, control or direction over, or a combination of direct or indirect beneficial ownership of, and control or direction over, securities of the reporting issuer carrying more than 10 percent of the voting rights attached to all the reporting issuer's outstanding voting securities; or

(f) in Québec, a person who exercises control over more than 10 percent of a class of shares of the reporting issuer to which are attached voting rights or an unlimited right to a share of the profits of the reporting issuer and in its assets in case of winding-up;

"insider issuer" in relation to a reporting issuer means an issuer that is an insider of the reporting issuer;

"investment issuer" in relation to ~~a reporting~~an issuer ~~(the first reporting issuer)~~ means a ~~second~~ reporting issuer in respect of which the issuer is an insider;

~~(a) in respect of which the first reporting issuer is an insider; and~~

~~(b) that is not a subsidiary of the first reporting issuer.~~

"issuer event" means a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event that affects all holdings of a class of securities of an issuer in the same manner, on a per share basis;

"lump-sum provision" means a provision of an automatic securities purchase plan ~~which~~that allows a director or senior officer to acquire securities in consideration of an additional lump-sum payment, including, in the case of a dividend or interest reinvestment plan ~~which~~that is an automatic securities purchase plan, a cash payment option;

"major subsidiary" means a subsidiary of a reporting issuer if

(a) the assets of the subsidiary, on a consolidated basis with its subsidiaries, as included in the most recent annual audited balance sheet of the reporting issuer, are 10 percent or more of the consolidated assets of the reporting issuer reported on that balance sheet, or

(b) the revenues of the subsidiary, on a consolidated basis with its subsidiaries, as included in the most recent annual audited income

statement of the reporting issuer, are 10 percent or more of the consolidated revenues of the reporting issuer reported on that statement;

"normal course issuer bid" means

(a) an issuer bid ~~which~~that is made in reliance on the exemption contained in securities legislation from certain requirements relating to issuer bids ~~which~~that is available if the number of securities acquired by the issuer within a period of twelve months does not exceed 5 percent of the securities of that class issued and outstanding at the commencement of the period, or

(b) a normal course issuer bid as defined in the policies of The Montreal Exchange, The TSX Venture Exchange or The Toronto Stock Exchange, conducted in accordance with the policies of that exchange;

"specified disposition of securities" means a disposition or transfer of securities ~~in connection with~~under an automatic securities purchase plan that satisfies the conditions set forth in section 5.4; and

"stock dividend plan" means an arrangement under which securities of an issuer are issued by the issuer to holders of securities of the issuer as a stock dividend or other distribution out of earnings or surplus.

PART 2 ~~EXEMPTION FROM INSIDER REPORTING~~EXEMPTIONS FOR CERTAIN DIRECTORS AND SENIOR OFFICERS

2.1 Reporting Exemption (Certain Directors) ~~– The~~ – Subject to section 4.1, the insider reporting requirement does not apply to 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; and

(b) is not ~~a director of a major subsidiary; and(c) is not~~ an ineligible insider ~~of~~in relation to the reporting issuer ~~in a capacity other than as a director of the subsidiary~~.

2.2 Reporting Exemption ~~(Certain Directors) – The insider reporting requirement does not apply to a director of a subsidiary of a reporting issuer in respect of securities of an investment 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 investment 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 investment issuer in a capacity other than as a director of the subsidiary.~~

~~**2.3 Reporting Exemption**~~ **(Certain Senior Officers) -** ~~The~~Subject to section 4.1, the insider reporting requirement does not apply to a senior officer of a reporting issuer or a subsidiary of the reporting issuer in respect of securities of the reporting issuer if the senior officer

~~(a) is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;~~

(a) ~~(b)~~ 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

(b) ~~(c) 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~~is not an ineligible insider in relation to the reporting issuer.

~~2.4~~2.3 **Reporting Exemption (Certain ~~Senior Officers) -~~ ~~The~~Insiders of Investment Issuers) -** Subject to section 4.1, the insider reporting requirement does not apply to a director or senior officer of ~~a reporting~~an insider issuer ~~or~~, or a director or senior officer of a subsidiary of the ~~reporting~~insider issuer, in respect of securities of an investment issuer if the director or senior officer

~~(a) is not in charge of a principal business unit, division or function of the reporting issuer or a major subsidiary of the reporting issuer;~~

(a) ~~(b)~~ does not in the ordinary course receive or have access to information as to material facts or material changes concerning the investment issuer before the material facts or material changes are generally disclosed; and

(b) ~~(c)~~ is not an ineligible insider ~~of~~in relation to the investment issuer ~~in a capacity other than as a senior officer of the reporting issuer or a subsidiary of the reporting issuer~~.

PART 3 EXEMPTION ~~FROM INSIDER REPORTING~~ FOR DIRECTORS AND SENIOR OFFICERS OF AFFILIATES OF INSIDERS OF A REPORTING ISSUER

3.1 Québec - This Part does not apply in Québec.

3.2 Reporting Exemption - Subject to section ~~3.3,~~3.3 and 4.1, the insider reporting requirement does not apply to a director or senior officer of an affiliate of an insider of a reporting issuer in respect of securities of the reporting issuer.

3.3 **Limitation** - The exemption in section 3.2 is not available if the director or senior officer

(a) 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;

(b) is an ineligible insider ~~of the reporting issuer in a capacity other than as a director or senior officer of an affiliate of an insider of~~in relation to the reporting issuer; or

(c) is a director or senior officer of ~~a company~~an issuer that supplies goods or services to the reporting issuer or to a subsidiary of the reporting issuer or has contractual arrangements with the reporting issuer or a subsidiary of the reporting issuer, and the nature and scale of the supply or the contractual arrangements could reasonably be expected to have a significant effect on the market price or value of the securities of the reporting issuer.

PART 4 ~~LISTS OF INSIDERS~~INSIDER LISTS AND POLICIES

4.1 **Insider Lists and Policies** - An insider of a reporting issuer may rely on an exemption contained in Part 2 or Part 3 if

~~**4.1** **Lists of Exempted Insiders** - Subject to section 4.2, a reporting issuer shall prepare and maintain~~

~~(a) a list of all insiders of the reporting issuer exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3, 2.4 and 3.2;~~

~~(b) a list of all insiders of the reporting issuer not exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3, 2.4 and 3.2; and~~

(a) the insider has advised the reporting issuer that the insider intends to rely on the exemption, and

~~(c) reasonable~~(b) the reporting issuer has advised the insider that the reporting issuer has established 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~~.~~, and will, as part of such policies and procedures, maintain:

(i) a list of all insiders of the reporting issuer exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2; and

(ii) a list of all insiders of the reporting issuer not exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2.

4.2 ~~**Exemption**~~**Alternative to Lists** - ~~A reporting issuer may, as an alternative to complying with the requirement to prepare and maintain the lists described in subparagraphs 4.1(a) and 4.1(b), file~~Despite section 4.1, an insider of a reporting issuer may rely on an exemption contained in Part 2 or Part 3 if

(a) the insider has advised the reporting issuer that the insider intends to rely on the exemption, and

(b) the reporting issuer has advised the insider that the reporting issuer has established policies and procedures relating to 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, and the reporting issuer has filed an undertaking with the regulator or securities regulatory authority that the reporting issuer will, promptly upon request, make available to the regulator or securities regulatory authority ~~a list containing the information described in subparagraphs 4.1(a) and 4.1(b) as at the time of the request.~~

(i) a list of all insiders of the reporting issuer exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2; and

(ii) a list of all insiders of the reporting issuer not exempted from the insider reporting requirement by sections 2.1, 2.2, 2.3 and 3.2.

PART 5 REPORTING OF ACQUISITIONS UNDER AUTOMATIC SECURITIES PURCHASE PLANS

5.1 **Reporting Exemption** - Subject to ~~section 5.2,~~sections 5.2 and 5.3, the insider reporting requirement does not apply to a director or senior officer of a reporting issuer or of a subsidiary of the reporting issuer for

(a) the acquisition of securities of the reporting issuer ~~pursuant to~~under an automatic securities purchase plan, other than the acquisition of securities ~~pursuant to~~under a lump-sum provision of the plan; or

(b) a specified disposition of securities of the reporting issuer ~~pursuant to~~under an automatic securities purchase plan.

5.2 Limitation

(1) ~~The~~Other than in Québec, the exemption in section 5.1 is not available to an insider ~~that beneficially owns, directly or indirectly, voting securities of the reporting issuer, or exercises control or direction over voting securities of the reporting issuer, or a combination of both, carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the reporting issuer~~described in clause (e) of the definition of "ineligible insider".

(2) In Québec, ~~subsection (1) does not apply.(3) In Québec,~~ the exemption in section 5.1 is not available to ~~a person who exercises control over more than 10 percent of a class of shares of a reporting issuer to which are attached voting rights or an unlimited right to a share of the profits of the reporting issuer and in its assets in case of winding up~~an insider described in clause (f) of the definition of "ineligible insider".

5.3 Alternative Reporting Requirement –

(1) An insider who relies on the exemption from the insider reporting requirement contained in section 5.1 ~~shall~~must file a report, in the form prescribed for insider trading reports under securities legislation, disclosing, on a transaction-by-transaction basis or in acceptable summary form, each acquisition of securities under the automatic securities purchase plan that has not previously been disclosed by or on behalf of the insider, and each specified disposition of securities under the automatic securities purchase plan that has not previously been disclosed by or on behalf of the insider,

(a) for any securities acquired under the automatic securities purchase plan ~~which~~that have been disposed of or transferred, other than securities ~~which~~that have been disposed of or transferred as part of a specified disposition of securities, within the time required by securities legislation for filing a report disclosing the disposition or transfer; and

(b) for any securities acquired under the automatic securities purchase plan during a calendar year ~~which~~that have not been disposed of or transferred, and any securities ~~which~~that have been disposed of or transferred as part of a specified disposition of securities, within 90 days of the end of the calendar year.

(2) An insider is exempt from the requirement under subsection (1) if, at the time the report is due,

(a) the insider has ceased to be an insider; or

(b) the insider is entitled to an exemption from the insider reporting requirements under an exemptive relief order or under an exemption contained in Canadian securities legislation.

5.4 **Specified Disposition of Securities** - 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 either

(i) the director or senior officer 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

(ii) the director or senior officer 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.

~~**5.5** **Alternative Reporting Exemption** - If an insider relies on the exemption from the insider reporting requirement contained in section 5.1, and thereby becomes subject to a 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), the insider is exempt from the alternative reporting requirement if, at the time the alternative reporting requirement is due,~~

~~(a) the insider has ceased to be an insider; or~~

~~(b) the insider is entitled to a general exemption from the insider reporting requirements under an exemptive relief order or under an exemption contained in Canadian securities legislation.~~

PART 6 REPORTING FOR NORMAL COURSE ISSUER BIDS

6.1 **Reporting Exemption** - The insider reporting requirement does not apply to an issuer for acquisitions of securities of its own issue by the issuer under a normal course issuer bid.

6.2 **Reporting Requirement** - An issuer who relies on the exemption from the insider reporting requirement contained in section 6.1 shall file a report, in the form prescribed for insider trading reports under securities legislation, disclosing each acquisition of securities by it under a normal course issuer bid within 10 days of the end of the month in which the acquisition occurred.

PART 7 REPORTING FOR CERTAIN ISSUER EVENTS

7.1 **Reporting Exemption** - The insider reporting requirement does not apply to an insider of a reporting issuer whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer changes as a result of an issuer event of the issuer.

7.2 **Reporting Requirement** - An insider who relies on the exemption from the insider reporting requirement contained in section 7.1 ~~shall~~must file a report, in the form prescribed for insider trading reports under securities legislation, disclosing all changes in direct or indirect beneficial ownership of, or control or direction over, securities by~~,~~ the insider for securities of the reporting issuer pursuant to an issuer event that have not previously been reported by or on behalf of the insider, within the time required by securities legislation for the insider to report any other subsequent change in direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer.

PART 8 EFFECTIVE DATE

8.1 **Effective Date** - This National Instrument comes into force on ~~•,~~April 30, 2005.

COMPANION POLICY 55-101CP
TO NATIONAL INSTRUMENT 55-101
~~EXEMPTION FROM CERTAIN~~ INSIDER REPORTING
~~REQUIREMENTS~~EXEMPTIONS

PART 1 PURPOSE

1.1 **Purpose -** The purpose of this Companion Policy is to set out the views of the Canadian ~~securities regulatory authorities~~Securities Administrators (the CSA or we) on various matters relating to National Instrument 55-101 ~~*Exemption from Certain*~~ *Insider Reporting* ~~*Requirements*~~*Exemptions* (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**~~**2.1** **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~~3 EXEMPTION FOR CERTAIN DIRECTORS AND SENIOR OFFICERS

~~**4.1**~~**3.1** **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~~b) is not an ineligible insider ~~of the reporting issuer in a capacity other than as a director of the subsidiary~~.

~~(2)~~ The exemption in section 2.1 is available for a director of a subsidiary of a reporting issuer but is not available for ~~directors~~a director 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~~an insider who otherwise comes within the definition of "ineligible insider". This is because such insiders, by virtue of ~~being directors,~~their positions, are presumed to 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.

The definition of "ineligible insider" includes an insider who is a director of a "major subsidiary" of the reporting issuer. 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.

Accordingly, directors of major subsidiaries are included in the definition of "ineligible insider".

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~~3.2 Exemption for Certain Senior Officers

(1) Section ~~2.3~~2.2 of the Instrument contains an exemption from the insider reporting requirements for a senior ~~officers~~officer of a reporting issuer or a subsidiary of a reporting issuer ~~who meet the following criteria (the non-executive~~if the senior 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.~~

(b) is not an ineligible insider.

(iii) The exemption contained in section ~~2.3~~2.2 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.~~

3.3 Exemption for Certain Insiders of Investment Issuers

Section 2.3 of the Instrument contains an exemption for a director or senior

officer of an "insider issuer" who meets certain criteria in relation to trades in securities of an "investment issuer". The criteria are as follows:

- the director or senior officer of the insider issuer does not in the ordinary course receive or have access to information as to material facts or material changes concerning the investment issuer before the material facts or material changes are generally disclosed; and

- the director or senior officer is not otherwise an "ineligible insider" of the investment issuer.

The reference to "material facts or material changes concerning the investment issuer" in the exemption 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 senior 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.

PART ~~5~~4 INSIDER LISTS ~~OF INSIDERS~~AND POLICIES

(1) Section 4.1 of the Instrument describes certain steps that must be taken before an insider of a reporting issuer may rely on an exemption in Part 2 or Part 3 of the Instrument. Section 4.1 requires ~~a reporting issuer to prepare and maintain~~

(a) ~~a list of insiders of~~the insider to have advised the reporting issuer ~~exempted from the insider reporting requirement by a provision of the Instrument~~,that the insider intends to rely on the exemption, and

(b) the reporting issuer to have advised the insider that the reporting issuer has established policies and procedures relating to 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, and the reporting issuer will, as part of such policies and procedures, maintain:

(i) a list of insiders of the reporting issuer ~~not~~ exempted from the insider reporting requirement 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.~~

(ii) a list of insiders of the reporting issuer not exempted by a provision of the Instrument.

An insider is not required to advise the reporting issuer each time the insider intends to rely on an exemption from the insider reporting requirement. An insider may advise the reporting issuer that the insider intends to rely on a specified exemption from the insider reporting requirement for present and future transactions for so long as the insider otherwise remains entitled to rely on the exemption.

If an insider has previously advised the reporting issuer that the insider intends to rely on an exemption that is substantially similar to an exemption contained in the Instrument, such as an exemption contained in the previous version of the Instrument or an exemption contained in an exemptive relief order, we would consider that this previous notification constitutes notification for the purposes of the condition in section 4.1 of the Instrument. Accordingly, it would not be necessary for an insider in these circumstances to again notify the reporting issuer after the Instrument comes into force.

If a reporting issuer advises an insider that the reporting issuer will maintain the lists described in section 4.1, but the reporting issuer subsequently fails to do so, we would accept that continued reliance by the insider on the exemptions would be reasonable so long as the insider did not know and could not reasonably be expected to know that the reporting issuer had failed to maintain the necessary lists.

(2) As an alternative to ~~complying with the requirement to prepare and maintain~~maintaining the lists described in subparagraphs 4.1(b) (~~a~~i) and (~~b) of section 4.1~~ii) 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 4.1(~~a~~b) (i) and (~~b~~ii) as at the time of the request.

The principal rationale behind the requirement to ~~prepare~~maintain 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 are 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~~insider 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~~Sections 4.1~~(c)~~ and 4.2 of the Instrument ~~requires~~require (as a condition to the availability of the exemptions in Parts 2 and 3) that a reporting issuer ~~to prepare~~establish and maintain ~~reasonable written~~certain 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~~insider trading. 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 issuer maintain the lists described in subparagraphs 4.1(b)(i) and (ii) or file an undertaking in relation to such lists.

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.

The disclosure standards described in National Policy 51-201 *Disclosure Standards* represent best practices recommended by the CSA. An issuer's policies and procedures need not be consistent with National Policy 51-201 in order for the exemptions in Parts 2 and 3 of the Instrument to be available.

PART ~~6~~5 AUTOMATIC SECURITIES PURCHASE PLANS

~~6.1~~5.1 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 (an ASPP).

(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 beenIf a plan participant acquires securities under an ASPP and wishes to report the acquisitions on a deferred basis in reliance on the exemption in section 5.1 of the Instrument, the plan participant is required to file an alternative form of report(s) as follows:

(a) in the case of acquisitions of securities that are not disposed of or transferred during the year (other than as part of a "specified disposition of securities", (discussed below), which were acquired under an automatic securities purchase plan during the year the participant must file a report disclosing all such 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; and

(b) in the case of acquisitions of securities that are disposed of or transferred during the year (other than as part of a "specified disposition of securities, the person", discussed below) the participant must file a report disclosing the acquisition of those securitiesand disposition within the normal time frame for filing insider reports, as contemplated by clause 5.3(1)(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~~5.2 Specified Dispositions of Securities

(1) A disposition or transfer of securities acquired under an ~~automatic securities purchase plan~~ASPP is a "specified disposition of securities" if

(a) the disposition or transfer is incidental to the operation of the ~~automatic securities purchase plan~~ASPP 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~~ASPP 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~~ASPP 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~~ASPP 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 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 represent a discrete investment decision (other than the initial decision to enter into the plan in question).

The reference to "discrete investment decision" in section 5.4 is intended to reflect a principles-based limitation on the exemption for permitted dispositions under an ASPP. Accordingly, in interpreting this term, you should consider the principles underlying the insider reporting requirement – deterring insiders from profiting from material undisclosed information

and signalling insider views as to the prospects of an issuer – and the rationale for the exemptions from this requirement.

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, among other things, a disposition made to satisfy a tax withholding obligation arising from the acquisition of securities under an ~~automatic securities purchase plan~~ASPP in certain circumstances. Under some types of ~~automatic securities purchase plans, it is not uncommon for~~ASPPs, an issuer or plan administrator ~~to~~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. ~~Generally~~In such plans, the ~~plan~~ participant ~~is required to~~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. ~~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 it meets the criteria contained in clause 5.4(b) of the Instrument.

~~(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~~5.3 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.~~

(1) Subsection 5.3(1) of the Instrument requires an insider who relies on the exemption for securities acquired under an ASPP 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 ASPP, 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 an ASPP, or under all ASPPs, 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. Similarly, an insider may report all specified dispositions of securities in a calendar year in acceptable summary form.

(2) ~~Clause 5.3(a) requires reports to be filed disclosing acquisitions of any securities under an automatic securities purchase plan which~~ If securities acquired under an ASPP 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~~should 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~~should 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~~ASPP 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~~ASPP in accordance with clause 5.3(1)(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~~5.4 Exemption to the Alternative Reporting Requirement

(1) If a director or senior officer relies on the ~~automatic securities purchase plan~~ASPP 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~~alternative reporting requirement under ~~section~~subsection 5.3(1) 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~~subsection 5.3(2) of the Instrument contains an exemption in this regard.

~~6.5~~5.5 **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~~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 which is consistent with this limitation.

PART ~~7~~6 EXISTING EXEMPTIONS

~~7.1~~6.1 **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.