ALBERTA SECURITIES COMMISSION

NOTICE
PROPOSED NATIONAL INSTRUMENT 55-101
AND COMPANION POLICY 55-101CP
EXEMPTION FROM CERTAIN INSIDER REPORTING REQUIREMENTS

The Commission, together with other members of the Canadian Securities Administrators (the "CSA"), is publishing for comment proposed National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* and proposed Companion Policy 55-101CP (referred to in this Notice respectively as the "Proposed Instrument" and the "Proposed Policy" and collectively as the "Proposal").

1. Background

(a) Insider Reporting Requirements

Canadian securities legislation requires insiders to disclose their ownership of and trading in securities of reporting issuers. Insider reporting requirements are intended to foster confidence in securities markets by providing current and potential investors with information concerning the trading activities of insiders, and by deterring improper insider trading.

Under Canadian securities legislation, every director or senior officer of a reporting issuer, and every director or senior officer of an insider of a reporting issuer, is an insider of the reporting issuer. In addition, Canadian securities legislation outside Québec defines "insider" to include any person or company that beneficially owns (directly or indirectly) or exercises control or direction over voting securities of a reporting issuer carrying more than 10 percent of the voting rights attached to all voting securities of the reporting issuer. In Québec, an insider includes a person who exercises control over more than 10 percent of a class of shares that carry a right to vote or an unlimited right to a share of the profits or assets of the issuer on a winding-up. Canadian securities legislation, other than in Québec, also stipulates that a company is deemed to beneficially own securities beneficially owned by its affiliates, with the consequence that insider reporting obligations extend to directors and senior officers of affiliates of an insider of a reporting issuer.

(b) Compliance Burden

The CSA recognize that the insider reporting requirements can be unnecessarily burdensome in some circumstances. Canadian securities regulatory authorities have routinely provided exemptive insider reporting relief on a case-by-case basis for:

- directors and senior officers of subsidiaries of a reporting issuer, or of affiliates of insiders of a reporting issuer, who have no other relationship with the reporting issuer and no access to undisclosed material information concerning the reporting issuer; and

- directors and senior officers for whom each purchase of securities under an automatic securities purchase plan would otherwise trigger an insider reporting obligation, notwithstanding that the purchases are made only in quantities, at prices and at times determined by pre-established formulae or criteria.

Securities legislation in some jurisdictions also provides limited relief from the insider trade reporting requirements. Section 184 of the Commission Rules (and similar provisions in certain other jurisdictions) deems the insider trade reporting requirements to be satisfied, without a filing by an affected insider, if an officer of the issuer files, within 10 days of the reportable event or transaction, written notice of:

- a stock dividend, stock split or consolidation or other corporate event that does not affect holders' proportionate holdings of securities (an "Issuer Event"); or

- an acquisition by the insider of securities of the issuer under a stock dividend plan, share purchase plan or other plan available to a class of securityholders, employees or management of the issuer (a "Plan Purchase").

(c) The 1999 Proposal and Public Comment

With a view to enhancing regulatory efficiency and eliminating unnecessarily burdensome reporting requirements, the CSA developed an earlier version of the Proposal (the "1999 Proposal", published for comment on August 20, 1999) which codified insider reporting exemptions on terms consistent with the exemptive relief routinely granted in individual cases in the circumstances described above.

The CSA received comments on the 1999 Proposal from two commenters. Their comments, and the CSA's responses, are summarized in the Appendix to this Notice. Consideration of these public comments, and of a number of recent discretionary exemptive orders and staff recommendations, have led the CSA to develop the revised Proposal.

(d) SEDI: Proposed System for Electronic Data on Insiders

In developing the Proposal, the CSA have also taken into account the development of an electronic insider trade reporting system, which would be established under proposed National Instrument 55-102 *System for Electronic Data on Insiders (SEDI)* ("SEDI", published for comment at the same time as this Notice).

SEDI is intended to facilitate filing and public dissemination of insider trade reports in electronic format through an Internet web site. Using the filed data, SEDI would be able to perform certain calculations automatically, including the computation of closing balances of securities holdings.

SEDI issuers would also be required to file certain information including electronic reports of Issuer Events. SEDI would not, however, adjust the data filed by insiders to reflect issuer-reported Issuer Events.

For that reason, the CSA consider that the existing relief provided by section 184 of the Commission Rules and similar provisions in other jurisdictions would not coexist effectively with SEDI. The Commission, and its counterparts in other jurisdictions whose securities legislation currently includes provisions comparable to section 184 of the Commission Rules, propose the repeal of those provisions. The CSA do, however, believe that modified relief would continue to be appropriate, and have expanded the insider reporting exemptions in the Proposed Instrument to incorporate modified reporting provisions in these circumstances.

The CSA propose to implement the Proposed Instrument at the same time as SEDI. Further modifications may be made to Proposed Instrument to facilitate effective implementation of SEDI.

2. The Proposal

This Notice summarizes the Proposal and highlights substantive changes from the 1999 Proposal. Other changes are identified in the footnotes to the Proposal.

The Proposed Instrument is proposed for implementation as a rule, regulation or other appropriate instrument in all of the jurisdictions represented by the CSA. It would also replace certain local policies including Ontario Securities Commission Policy 10.1, British Columbia Securities Commission Local Policy Statement 3-14 and Policy Statement No. Q-10 of the Commission des valeurs mobilières du Québec.

The text of the Proposal that accompanies this Notice includes footnotes that have been included to provide background and explanation. Terms used but not defined in the Proposal have the meanings ascribed to them in Canadian securities legislation unless the context otherwise requires.

(a) Overview

The Proposed Instrument:

- provides an exemption from insider reporting obligations for certain insiders who are not significant securityholders of the reporting issuer and not in a position to acquire knowledge of undisclosed material information; and

- modifies the insider reporting obligation for certain purchases of securities under an automatic securities purchase plan or a normal course issuer bid;

in each case on terms consistent with exemptive relief granted in the past but without the need for individual applications for exemptive relief.

The Proposed Instrument also modifies insider reporting obligations in respect of Issuer Events.

The Proposed Instrument would require issuers to maintain a list of their insiders eligible for specified reporting exemptions.

(b) Exemptions from Insider Reporting

Parts 2 and 3 of the Proposed Instrument, substantively unchanged from the 1999 Proposal, would exempt directors and senior officers of subsidiaries of a reporting issuer, and directors and senior officers of affiliates of insiders of the reporting issuer, from insider reporting obligations in respect of securities of the reporting issuer.

The exemptions would not be available to a person who (i) is also an insider of the reporting issuer in some other capacity and not otherwise exempted, or (ii) in the ordinary course receives information as to material facts or material changes concerning the reporting issuer before it is generally disclosed. The exemption for directors and senior officers of a subsidiary would not apply for a subsidiary that represents 10 percent or more of the consolidated assets or revenues of the reporting issuer.

The exemption for directors and senior officers of an affiliate of an insider would not apply if the affiliate supplies goods or services to, or has contractual arrangements with, the reporting issuer or a subsidiary, the nature and scale of which could reasonably be expected to have a significant effect on the market price or value of the reporting issuer's securities. The exemption would also not apply in Québec, where securities legislation does not impose insider reporting obligations on directors and senior officers of affiliates of insiders.

(c) Automatic Purchase Plans

The Proposed Instrument would also permit modified insider reporting for certain insider purchases of securities for which a complete reporting exemption is unavailable.

Part 5 would vary the usual requirement that insiders report securities purchases shortly after the purchase (in Alberta, within 10 days after the purchase). Instead, qualifying directors and officers whose security holdings do not exceed the 10 percent threshold referred to above under "Background" could defer reporting purchases of securities under an automatic securities purchase plan until 90 days after the end of the calendar year or such earlier time as they are required to report a disposition of the securities.

Unlike the 1999 Proposal, this modified reporting regime would also be available to directors and senior officers of *subsidiaries* of the reporting issuer, and references to the *calendar year* replace references to a reporting issuer's *financial year.* Other changes to definitions and to Part 5 of the Proposed Instrument, together with new commentary in Part 4 of the Proposed Policy, make clear that the modified reporting regime is meant to apply only where insiders do not make discrete investment decisions for acquisitions under an automatic plan and does not apply to securities purchased with additional lump sum cash payments.

As discussed above in connection with SEDI, the CSA propose that Part 5 of the Proposed Instrument replace subsection 184(2) of the Commission Rules and corresponding provisions of securities legislation in other jurisdictions.

(d) Normal Course Issuer Bids

The Proposal now incorporates a modified insider reporting regime for purchases of securities by an issuer under a normal course issuer bid. In light of the disclosure and other requirements of securities legislation and exchanges applicable to normal course issuer bids, the CSA are of the view that reporting of individual purchases is unnecessary. Part 6 of the Proposed Instrument would instead permit an issuer to report, within 10 days after the end of a month, all of its securities purchases during the month under a normal course issuer bid.

(e) Issuer Events

As discussed above in connection with SEDI, the CSA propose the repeal of subsection 184(1) of the Commission Rules and corresponding provisions of securities legislation in other jurisdictions that vary the insider trade reporting obligation in respect of Issuer Events.

In place of those provisions, new Part 7 of the Proposed Instrument would permit insiders of a reporting issuer to defer reporting the consequences of an Issuer Event until the time at which they are required to report any other change in their ownership of or control over securities of the reporting issuer.

(f) Guidance

The Proposed Policy provides explanation and guidance concerning the Proposed Instrument.

Part 3 makes clear that the Proposed Instrument affects only the insider *reporting* requirements, and does not alter restrictions on, and liability for, improper insider trading. Part 4 addresses the modified reporting permitted for purchases under automatic securities purchase plans, and sets out CSA views on the appropriate content of annual reporting.

Part 5 reminds market participants that they will continue to be able to rely on outstanding exemptive orders despite implementation of the Proposal.

Comments

The CSA invite written comment on the Proposal by August 16, 2000. Comment is also invited on the proposed repeal of section 184 of the Commission Rules and similar provisions of securities legislation in other jurisdictions, and in particular on whether the relief provided by these provisions should be retained for non-SEDI issuers.

Submissions should be sent to all of the Canadian securities regulatory authorities in care of the Ontario Securities Commission, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St Pierre,
Secrétaire
Commission des valeurs mobilières du Québec
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3

Submissions should be sent in duplicate and accompanied by a diskette containing the submission in DOS or Windows format, preferably WordPerfect. As securities legislation in certain provinces requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to any of the following:

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June 16, 2000.

APPENDIX

to

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Summary of Public Comments and CSA Responses

The CSA received three comment letters, one from The Great-West Life Assurance Company, one from the Canadian Bankers Association and one from Quebecor Inc., in response to the request for comments published by the Commission and other CSA members on August 20, 1999.

One commenter indicated that it welcomed the initiative of the CSA reflected in the 1999 Proposal. Another commenter indicated that it recognized and applauded the significant steps taken by the CSA to streamline and decrease the administrative burden with respect to reporting requirements.

Definition of Automatic Securities Purchase Plan

One commenter requested that the definition of “automatic securities purchase plan” in the 1999 Proposal be amended in order to extend the insider reporting exemptions to a plan of a *subsidiary* of a reporting issuer and to directors and senior officers of the subsidiary, where such a subsidiary has established a plan that allows its employees to purchase shares of the parent, which is itself the reporting issuer.

The CSA have determined that the proposed revision is reasonable, as there is no reason not to include a plan of a subsidiary of the reporting issuer in the definition of an "automatic securities purchase plan" and to extend the exemption to directors and senior officers of subsidiaries of reporting issuers. Accordingly, the definition of "automatic securities purchase plan" in section 1.1, and section 5.1, have been changed by the addition of the words "or subsidiary of a reporting issuer" where appropriate.

A commenter submitted that the definition of “automatic securities purchase plan” should be amended to include dividend reinvestment plans offered by registered broker dealers, given that the Canadian securities regulators have on numerous occasions granted exemptions to such plans. The commenter also submitted that the optional cash component of such plans should also be included in the definition of “automatic securities purchase plan” as such plans are subject to restrictions as to when purchases are actually made, which make them unlikely to be abused for the purposes of insider trading.

The CSA have determined that the definition of "automatic securities purchase plan" need not be revised to include dividend or interest reinvestment plans ("DRIPs"), given that the Proposed Policy specifically states that the definition of "automatic securities purchase plan" includes DRIPs so long as the criteria in the definition are met.

The CSA have determined not to extend the definition of automatic securities purchase plans to DRIPs offered by registered dealers, as there are more discretionary elements to the participation of insiders in such arrangements. The CSA also determined not to extend the definition of automatic securities purchase plans to DRIPs offered by registered dealers, as they believe that it is appropriate to restrict the exemption to plans of reporting issuers of which the directors or senior officers are insiders, on the basis that this will effectively promote compliance with the requirements contained in the exemptions. The CSA note that, to the extent that registered dealers are subsidiaries of reporting issuers, the directors and senior officers of

those reporting issuers and their subsidiaries will be able to avail themselves of the automatic securities purchase plan exemption provided by the 1999 Proposal.

The CSA disagree with the suggestion that the optional cash component of an automatic securities purchase plan be included in the definition of "automatic securities purchase plan." The decision to invest an additional amount of cash is discretionary and by its very nature falls outside of the ambit of an automatic securities purchase plan. A number of precedent decisions have declined to grant exemptive relief in respect of the optional cash component of such plans, and the CSA are of the view there is no good reason to change the regulatory position on this point.

Definition of Senior Officer in Securities Legislation --
Narrow Insider Reporting Requirements

A commenter submitted that the definition of “senior officer” should be narrowed such that the insider reporting requirements would not apply to a senior officer who is a vice-president of a reporting issuer or a vice-president of a subsidiary (including a significant subsidiary) of a reporting issuer so long as:

a) the vice-president is not in charge of a principal business unit, division or function of the reporting issuer or subsidiary, as the case may be;

b) the vice-president does not receive, in the ordinary course, information as to material facts or changes concerning the reporting issuer before the material facts or changes are generally disclosed; and

c) the vice-president is not an insider of the reporting issuer or a subsidiary in any other capacity.

It was submitted that the foregoing proposal would bring the insider reporting requirements more into line with the approach taken by the United States Securities and Exchange Commission and with other existing reporting requirements, such as those found in Form 40 which only require disclosure with respect to “executive officers” of an issuer, as opposed to all “senior officers”. The commenter was of the view that narrowing the insider reporting requirements would relieve the large administrative burden currently placed on certain issuers, particularly where titles are often conferred on individuals that “are honorific in nature and may not necessarily reflect the level of managerial responsibility of the individual”.

The CSA have determined that the Proposal should not be revised to narrow the definition of "senior officer" for insider reporting purposes. Significant amendment of the definition of "insider" in securities legislation is beyond the scope of the Proposal. The CSA believe that this comment raises broader issues which the CSA are currently reviewing. Pending the results of such review, the CSA will consider applications for exemption in this regard case by case.

Annual Reports

A commenter noted that individuals who are required to file insider reports within 90 days of the financial year end of certain issuers may have difficulty in complying because the statements produced by the issuers which such persons need in order to file such reports are only delivered to them on a calendar quarterly basis. The commenter therefore requested that the deadline for the annual reporting requirement for acquisitions of securities under an automatic securities purchase plan be extended to March 31 or, in the alternative, that the 1999 Proposal be changed to permit an issuer or insider to elect to report within 90 days of the end of either the calendar year or the fiscal year, in order to ensure that the required information is available on a timely basis to the persons required to file insider reports.

The CSA have determined that it is appropriate for the annual reporting to be on a calendar year basis. This change has been made in section 5.3 of the Proposed Instrument. The CSA believe that this addresses the concern raised by the commenter, without the necessity of providing for an election.

List of Exempted Insiders

A commenter noted that the 1999 Proposal would require reporting issuers to maintain a list of all insiders exempted by the 1999 Proposal and the basis upon which such insiders are exempt. The commenter stated that for certain large institutions, the task of keeping a list of all insiders pursuant to this section is very burdensome. Instead, the commenter proposed that this requirement be amended such that a reporting issuer only be required to maintain a list of individuals who are required to file insider reports.

The CSA decided that it was appropriate to require issuers to keep a list of all those insiders who fall within the exemptions from insider reporting requirements. As a result, section 4.1 (formerly section 5.1) was added to the 1999 Proposal. Section 4.1 is less onerous than the terms of numerous prior orders where issuers were required to provide copies of the list to the regulators and to promptly notify the regulators of any changes to the list. In the CSA's view, requiring issuers to maintain a list of all those individuals who are exempt from the insider reporting requirements is a logical step; otherwise, it would be difficult for regulators to review an issuer's practices in this regard. The CSA assume that, as a practical matter, determinations will have to be made by issuers as to the insiders who are eligible for relief under the Proposed Instrument in any event, so that the maintenance of such a list should not be unduly onerous. Consequently, the CSA have determined that section 4.1 (formerly section 5.1) of the Proposed Instrument should not be changed.