

## Canadian Securities Administrators Staff Notice 55-306

### Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents

#### Purpose

This notice outlines the circumstances in which staff will support applications for relief from the requirements under Canadian securities legislation to file insider reports by persons who are technically insiders by virtue of holding the title of “vice-president” but who do not have access to confidential inside information.

#### Background

Canadian securities legislation requires insiders of a reporting issuer to disclose ownership of and trading in securities of that reporting issuer. The insider reporting requirements serve a number of functions, including deterring illegal insider trading and increasing market efficiency by providing investors with information concerning the trading activities of insiders of the issuer, and, by inference, the insiders’ views of their issuer’s prospects.

The definition of “insider” in Canadian securities legislation includes individuals who hold the title of “vice-president”. When the insider reporting requirements were developed in the 1960s, persons who held such a title exercised a senior officer function and were therefore required to file insider reports.

Since that time, we recognize that it has become widespread industry practice, particularly in the financial services sector, for issuers to grant the title of “vice-president” to certain employees primarily for marketing purposes. This phenomenon is sometimes referred to as “title inflation” or “title creep”. In many cases, these individuals do not ordinarily have access to material undisclosed information prior to general disclosure and would not reasonably be considered to be senior officers from a functional point of view. (In this notice, such vice-presidents are referred to as “nominal vice-presidents”.) For many larger issuers, the ratio of nominal vice-presidents to vice-presidents who truly exercise a senior officer function may be very high.

We recognize that requiring *all* vice-presidents to file insider reports may impose significant regulatory costs on these individuals and their issuers for little or no corresponding benefit. It has been suggested that the current requirements may actually serve to undermine the policy objectives underlying the insider reporting requirements, since the trading activities of “true” insiders may be hidden by the large volume of insider reports filed by nominal vice-presidents. Consequently, as a result of changes in industry practice, we believe that it is no longer appropriate to require all persons who are “vice-presidents” to file insider reports.

## **Applications for Discretionary Relief for Nominal Vice-Presidents**

CSA staff will generally support an application for relief from the insider reporting requirements for an individual who is a “nominal vice-president” if the application conforms to the guidelines set out below.

### *Contents of Application for Exemptive Relief*

Where the applicant is seeking relief from the insider reporting requirements of more than one CSA jurisdiction, the application should be made in accordance with the terms of National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*.

The application should, among other things, identify:

- the jurisdictions in which the issuer is a reporting issuer or equivalent;
- the number of persons who are insiders of the issuer by reason of being an officer or director of the issuer;
- the number of persons who are insiders of the issuer but who are currently exempt from the insider reporting requirements by reason of an existing exemption such as 55-101 (described below) or a previous decision or order; and
- the number of persons on behalf of whom relief is being sought on the grounds that they are “nominal vice-presidents”.

The application should contain a representation that each individual for whom relief is requested meets the following definition of “nominal vice-president”:

- the individual is a vice-president;
- 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 (as such term is defined in 55-101);
- 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 insider of the reporting issuer in any other capacity.

The application should contain a description of the policies related to trading in securities of the issuer by insiders and other employees of the issuer (for example, employees other than insiders who may routinely have access to material undisclosed information and whose trading the issuer monitors or restricts).

The application should also describe how the issuer proposes to determine which of its insiders meet the criteria necessary for the exemption, both initially and on an ongoing basis to ensure that the exemption continues to apply.

*Conditions on which staff will recommend relief*

We will generally recommend relief from the insider reporting requirements for an individual on the following conditions:

- the individual satisfies the definition of “nominal-vice president”;
- the issuer prepares and maintains a list of all individuals who propose to rely on the exemption contained in the decision, submits the list on an annual basis to the board of directors of the issuer for approval, and files the list with the applicable securities regulatory authorities;
- the issuer files with the applicable securities regulatory authorities a copy of its internal policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons whose trading activities are restricted by the issuer; and
- the relief will cease to be effective when 55-101 is amended.

*Scope of Exemptions*

The exemptions under the applications for exemptive relief described above are exemptions only from the insider reporting requirements and are not exemptions from the provisions in Canadian securities legislation imposing liability for improper insider trading.

**Proposed Amendments to National Instrument 55-101**

In May 2001, the CSA adopted National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements* which provided for a number of exemptions from the insider reporting requirements. In the comment period preceding the adoption of 55-101, a commentator suggested that 55-101 should also include an exemption from the insider reporting requirements for nominal vice-presidents. The CSA deferred considering this question to avoid delaying the implementation of 55-101.

CSA staff have now considered the proposed exemption for nominal vice-presidents, and believe that such an exemption is appropriate. We anticipate that a proposed amendment to 55-101 addressing this and perhaps other issues will be published for comment later this year. In the interim, staff will generally support applications for discretionary relief as discussed above.

**Further Information**

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