

**NATIONAL INSTRUMENT 55-101
EXEMPTION FROM CERTAIN INSIDER
REPORTING REQUIREMENTS¹**

PART 1 DEFINITIONS¹

1.1 Definitions - In this Instrument

"automatic securities purchase plan" means a plan of a reporting issuer or of a subsidiary of the reporting issuer² 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 a subsidiary of the reporting issuer² and the price payable for the securities are established by written formula or criteria set out in a plan document³;

"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 or interest payable to or for the account of the participant; or
- (b) acquired as a stock dividend or other distribution out of earnings or surplus⁴;

¹ This proposed National Instrument is derived from Ontario Securities Commission Policy Statement 10.1, British Columbia Local Policy Statement 3-14 and Policy Statement No. Q-10 of the Commission des valeurs mobilières du Québec which set out guidelines for applications for exemptions from insider reporting obligations. The proposed National Instrument is being proposed for implementation as a rule, regulation or other appropriate instrument in all of the jurisdictions represented by the CSA. This National Instrument was published for comment on August 20, 1999 (the "1999 Proposed National Instrument"). As a result of consideration of comments received, and further deliberations of the CSA, it is being republished for comment.

² See footnote 3.

³ The word "document" has been added after the words "set out in the plan" to allow for the formula or criteria to be set out in another plan document, such as a trust agreement. The words "written" have been inserted to ensure that there is certainty as to the existence and content of such formula or criteria.

⁴ This definition has been added. This term is incorporated in the definition of "lump-sum provision". See footnote 9. The definition of "cash payment option" is substantially similar to the definition of this term in Ontario Securities Commission Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans.

"dividend or interest reinvestment plan" means an arrangement under which a holder of securities of an issuer is permitted to direct that the dividends or interest 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 issue⁵;

"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;⁶

"lump-sum provision" means a provision of an automatic securities purchase plan which 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, a cash payment option⁷;

"normal course issuer bid" means⁸

- (a) an issuer bid⁹ pursuant to which the number of securities acquired by the issuer within a period of twelve months does not exceed 5% 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 Canadian Venture Exchange or The Toronto Stock Exchange, conducted in accordance with the policies of that exchange;

⁵ This definition has been added. This term is incorporated in the definition of "cash payment option". The definition of "dividend or interest reinvestment plan" is substantially similar to the definition of this term in Ontario Securities Commission Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans.

⁶ This definition has been added for the purposes of the new exemption provided in Part 7. The definition is identical to the definition of this term in proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI) and is derived from the provisions of securities legislation of some Canadian jurisdictions which provides exemptive relief from the insider reporting requirement for certain corporate events.

⁷ This definition has been added. This term is used in section 5.1 to clarify that the exemption does not apply to securities acquired under lump-sum provisions of automatic securities purchase plans, including cash payment options of dividend or interest reinvestment plans.

⁸ This definition has been added for the purposes of the new exemption provided in section 6.1. The definition is based in part on the wording used in securities legislation which provides an exemption from issuer bid requirements for bids which meets this requirement. These bids are typically referred to as normal course issuer bids.

⁹ The term "issuer bid" is defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation.

"significant subsidiary"¹⁰ means a subsidiary of a reporting issuer if

- (a) the value of the assets of the subsidiary, on a consolidated basis with its subsidiaries, as reflected in the most recent annual audited balance sheet of the reporting issuer that the reporting issuer has filed, are 10 percent or more of the consolidated assets of the reporting issuer shown on that balance sheet, or
- (b) the revenues of the subsidiary, on a consolidated basis with its subsidiaries, as reflected in the most recent annual audited statement of income and loss of the reporting issuer that the reporting issuer has filed, are 10 percent or more of the consolidated revenues of the reporting issuer shown on that statement of income and loss.

PART 2 EXEMPTION FROM INSIDER REPORTING FOR DIRECTORS AND SENIOR OFFICERS OF CERTAIN SUBSIDIARIES

2.1 Reporting Exemption - Subject to section 2.2, the insider reporting requirement³ does not apply to a director or senior officer of a subsidiary of the reporting issuer in respect of securities of the reporting issuer.

2.2 Limitation - The exemption in section 2.1 is not available if the director or senior officer

- (a) receives, in the ordinary course, information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed;

¹⁰ This definition is consistent with the comparable definitions in the British Columbia and Quebec policies referred to in note 1. It differs from the Ontario policy in one important respect. A major subsidiary in the Ontario policy included a subsidiary whose directors and senior officers, in the ordinary course, received notice of material facts or changes with respect to a reporting issuer before public disclosure. As a result, if some or all of the directors and senior officers received such information in any capacity, the subsidiary would constitute a major subsidiary and all of the directors and officers would be denied the exemption notwithstanding that certain directors and officers would not have been privy to the information. It has been decided that only those directors and senior officers who actually receive this type of information should be denied the exemption. This has been dealt with in section 2.2 of this Instrument. The definition has not changed from that contained in the 1999 Proposed National Instrument.

- (b) is a director or senior officer of a significant subsidiary; or
- (c) is also an insider of the reporting issuer in a capacity other than as a director or senior officer of the subsidiary and is not otherwise exempted from the insider reporting requirement.

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.⁴

3.2 Reporting Exemption - Subject to section 3.3, the insider reporting requirement does not apply to a director or senior officer of an affiliate of an insider of the 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) receives, in the ordinary course, information as to material facts or material changes concerning the reporting issuer before the material facts or material changes are generally disclosed;
- (b) is also an insider of the reporting issuer in a capacity other than as a director or senior officer of an affiliate of an insider of the reporting issuer and is not otherwise exempted from the insider reporting requirement; or
- (c) is a director or senior officer of a company 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.⁵

PART 4 LIST OF EXEMPTED INSIDERS

4.1 List of Exempted Insiders - A reporting issuer shall maintain a list of all insiders of the reporting issuer exempted by Parts 2 and 3 of this Instrument and the basis on which each insider is entitled to rely on one of the exemptions.

PART 5 REPORTING OF ACQUISITIONS UNDER AUTOMATIC SECURITIES PURCHASE PLANS

5.1 Reporting Exemption - Subject to sections 5.2 and 5.3, the insider reporting requirement does not apply to the acquisition by a director or senior officer of a reporting issuer or of a subsidiary of the reporting issuer⁶ of securities of the reporting issuer pursuant to an automatic securities purchase plan, other than the acquisition of securities by a director or senior officer pursuant to a lump-sum provision¹¹ of the plan.

5.2 Limitation

- (1) 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, that carry more than 10 percent of the voting rights attaching to all outstanding voting securities of the reporting issuer.
- (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.

5.3 Reporting Requirement - An insider who relies on the exemption from the insider reporting requirement contained in section 5.1⁷ shall report, in the form prescribed for insider trading reports under securities legislation, all acquisitions of securities under the automatic securities purchase plan that have not previously been reported by or on behalf of the insider

¹¹ This provision has been revised to clarify that the exemption does not apply to securities acquired under lump-sum provisions. See the definition of this term in Part 1.

- (a) for any securities acquired under the automatic securities purchase plan which have been disposed of or transferred, within the time required by securities legislation for reporting the disposition or transfer; and
- (b) for any securities acquired under the automatic securities purchase plan during a calendar year which have not been disposed of or transferred, within 90 days of the end of the calendar year¹².

PART 6 REPORTING FOR NORMAL COURSE ISSUER BIDS

6.1 Reporting for Normal Course Issuer Bids⁸ - Despite any requirement of securities legislation relating to the insider reporting requirement that an issuer file a report for each acquisition of securities by the issuer under an issuer bid within 10 days of the date of the acquisition, the issuer may report, in the form prescribed for insider trading reports under securities legislation, acquisitions of securities by it under a normal course issuer bid within 10 days of the end of the month in which the acquisitions occurred.

PART 7 REPORTING FOR CERTAIN ISSUER EVENTS

7.1 Reporting Exemption - Subject to section 7.2, the insider reporting requirement does not apply to a change in direct or indirect beneficial ownership of, or control or direction over securities by, an insider of a reporting issuer for securities of the reporting issuer pursuant to 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 report, in the form prescribed for insider trading reports under securities legislation, 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 change in direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer.

¹² The annual reporting requirement has been changed to provide for reporting on a calendar year, as opposed to a financial year, basis.

PART 8 EFFECTIVE DATE

8.1 Effective Date - This National Instrument comes into force on !,
2000.

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TABLE OF CONTENTS

<u>PART</u>	<u>TITLE</u>	<u>PAGE</u>
PART 1	DEFINITIONS	1
	1.1 Definitions	1
PART 2	EXEMPTION FROM INSIDER REPORTING FOR DIRECTORS AND SENIOR OFFICERS OF CERTAIN SUBSIDIARIES	3
	2.1 Reporting Exemption	3
	2.2 Limitation	3
PART 3	EXEMPTION FROM INSIDER REPORTING FOR DIRECTORS AND SENIOR OFFICERS OF AFFILIATES OF INSIDERS OF A REPORTING ISSUER	4
	3.1 Québec	4
	3.2 Reporting Exemption	4
	3.3 Limitation	4
PART 4	LIST OF EXEMPTED INSIDERS	5
	4.1 List of Exempted Insiders	5
PART 5	REPORTING OF ACQUISITIONS UNDER AUTOMATIC SECURITIES PURCHASE PLAN	5
	5.1 Reporting Exemption	5
	5.2 Limitation	5
	5.3 Reporting Requirement	5
PART 6	REPORTING FOR NORMAL COURSE ISSUER BIDS	6
	6.1 Reporting for Normal Course Issuer Bids	6
PART 7	REPORTING FOR CERTAIN ISSUER EVENTS	6
	7.1 Reporting Exemption	6
	7.2 Reporting Requirement	6
PART 8	EFFECTIVE DATE	7
	8.1 Effective Date	7

1. A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.
2. The words "or of a subsidiary of a reporting issuer" have been added so that the exemption in section 5.1 will extend to a plan of a subsidiary of the reporting issuer and so that the exemption in section 5.1 will be available to directors and senior officers of a subsidiary of a reporting issuer.
3. The term "insider reporting requirement" is defined in National Instrument 14-101 Definitions as "the requirement in securities legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer".
4. A director or senior officer of an affiliate of an insider of the reporting issuer is not an insider under the *Securities Act* (Québec).
5. This is an expansion of the provision in the British Columbia and Ontario policies referred to in note 1 as it goes beyond the supply of goods and services to cover other contractual arrangements and removes the reference to factors affecting the supply of goods or services and instead refers to the nature and scale of the supply or the contractual arrangements. This Part has not changed from the 1999 Proposed National Instrument.
6. See footnote 3.
7. The wording has been revised to clarify that the reporting requirement in section 5.3 applies to insiders who rely on the exemption in section 5.1, not to insiders who may be exempt but nonetheless do not utilize the exemption.
8. This new exemption from the insider reporting requirement has been added to allow issuers conducting normal course issuer bids to report on acquisitions under such bids within 10 days after the month in which the acquisitions occur, instead of within 10 days of each acquisition. This Part has been added to provide an exemption from the insider reporting requirement for changes in direct or indirect beneficial ownership of, or control or direction over, securities by an insider that result from certain issuer events that affect all holders of a class of securities in the same manner, such as a stock dividend, stock split, consolidation, amalgamation, reorganization or merger. Currently, the securities legislation of some Canadian jurisdictions provides for an exemption from the insider reporting requirement upon the occurrence of specified corporate events, such as those set forth above, where an officer of the issuer files a notice of the transaction within 10 days. Under proposed National Instrument 55-102 System for Electronic Data on Insiders (SEDI), which establishes an electronic filing system for insider trade reporting, SEDI issuers will be required to report such events. However, under the electronic filing system, such reports will not adjust the individual disclosure for insiders. In light of this, the existing exemption will not effectively co-exist with the new electronic filing system for SEDI issuers and for this reason the CSA propose to revoke the existing exemptive relief in Canadian securities legislation. Nonetheless, the CSA believe that exemptive relief should be provided to insiders in these circumstances and accordingly the exemption in Part 7 has been provided to provide exemptive relief for insiders whose holdings are affected by such events.