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## 1 hot issues

### New Canadian Insider Reporting Regs – Coming Into Effect On April 30, 2010

Highlights you need to know about the new insider reporting regime:

- A reduced number of persons will be required to file insider reports on **SEDI (System for Electronic Disclosure by Insiders)** [www.sedi.ca](http://www.sedi.ca);
- Initial phase in will begin April 30, 2010 but after **October 31, 2010**, the SEDI filing requirement will be **reduced** from **10** calendar days to **5 calendar days (this includes weekends and holidays)**;
- There will be facilitated insider reporting of stock-based compensation arrangements allowing issuers to file an “issuer grant report” in a similar manner to the current “issuer event report”;
- There will be simplified and more consistent reporting requirements for stock-based compensation arrangements.

#### The Regulations

The Canadian Securities Administrators (“CSA”) are adopting a new **National Instrument 55-104 (NI 55-104) Insider Reporting Requirements and Exemptions** (the “New Instrument”) and **Companion Policy 55-104CP Insider Reporting Requirements and Exemptions** (the “New Policy”) (together, the “New Materials”). The New Instrument sets out the main insider reporting requirements and exemptions from those requirements for insiders of reporting issuers, *except in Ontario*. In Ontario, the main insider reporting requirements will remain in the *Securities Act* (Ontario). Despite this difference, the substance of the requirements for insider reporting will be the same across the CSA jurisdictions. The New Policy provides guidance as to how the CSA would interpret or apply certain provisions of the New Instrument. Except in Ontario, the New Materials will come into force on **April 30, 2010 (but there will be a six month phase in until October 31, 2010 when the instrument officially goes into effect)**. In Ontario, the New Materials will come into force on the later of the following: (a) April 30, 2010; and (b) the date certain amendments to the *Securities Act* (Ontario) are proclaimed into force.

#### Who is considered a “Reporting Insider”

It is sometimes challenging to determine who is actually an “insider”. The CSA developed the term “**reporting insider**” specifically for the purposes of the New Instrument. The insider reporting requirements are focused on a **core group of persons** and companies who, in some cases, are **not** “insiders” as defined in securities legislation. The term “reporting insider” contains a list of persons and companies, as well as a “catch all” provision at the end. The list includes, among others, the CEO, CFO or COO of the reporting issuer, of a significant shareholder of the reporting issuer or of a major subsidiary of the reporting issuer; a director of same; a person or company responsible for a principal business unit, division or function of the reporting issuer; and a significant shareholder of the reporting issuer. In addition to the enumerated positions, a person or company, regardless of title or position, that:

- (i) 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; **and**
- (ii) directly or indirectly exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer,

will also fall within the definition of a “reporting insider” and will now be required to file insider reports.

#### A “reporting insider” checklist:

- CEO, CFO or COO of the reporting issuer, or a significant shareholder of reporting issuer or of a major subsidiary of reporting issuer;
- director of the reporting issuer, of a significant shareholder of reporting issuer or of a major subsidiary of reporting issuer;
- person or company responsible for a principal business unit, division or function of reporting issuer;
- significant shareholder (greater than 10% share ownership) of reporting issuer;
- significant shareholder based on post-conversion beneficial ownership of the reporting issuer’s securities and the CEO, CFO, COO and every director of the significant shareholder based on post-conversion beneficial ownership;
- management company that provides significant management or administrative services to reporting issuer or a major subsidiary of reporting issuer, every director of the management company, every CEO, CFO and COO of the management company, and every significant shareholder of the management company;

- individual performing functions similar to the functions performed by any of the insiders described in paragraphs (a) to (f);
- the reporting issuer itself, if it has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security; or
- any other insider that:
  - i. 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; and
  - ii. directly or indirectly exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer.

### Reporting Requirements and Deadlines

The primary insider reporting requirement is set out in Part 3 of the New Instrument. It covers securities of the reporting issuer as well as “related financial instruments”, such as options, warrants and other convertible or exchangeable securities.

**The New Instrument retains the ten day deadline for filing initial reports to accommodate new filers and the time associated with creating new insider profiles on the SEDI. A reporting insider must file an initial report disclosing the reporting insider’s:**

- (a) beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer, and
- (b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

If there is a change to any of the above, a reporting insider must file a **subsequent report** within **five days of such change disclosing the change**. However, the New Instrument provides for a six-month transition period for the filing deadline, whereby a reporting insider may file a subsequent report within 10 days of a change if the change relates to a transaction that occurred on or before **October 31, 2010**.

### Stock-Based Compensation Arrangements

The CSA simplified and made more consistent the insider reporting requirements relating to different types of stock-based compensation arrangements, such as stock options, phantom stock units, stock appreciation rights, restricted share awards, deferred share units, and similar instruments. Historically, there has been some uncertainty as to whether, as a matter of law, certain derivative instruments involving securities are themselves securities. The New Instrument resolves this uncertainty by including derivative instruments in the definition of “related financial instrument”. Under the New Instrument, it is not necessary to determine whether a particular derivative instrument is a security or a related financial instrument since the insider reporting requirement in Part 3 of the New Instrument applies to both securities and related financial instruments.

### Issuer Grant Reports

Part 6 of the New Instrument contains an exemption from the insider reporting requirement for directors and officers of a reporting issuer or a major subsidiary of a reporting issuer who are reporting insiders of the reporting issuer for certain grants of securities and related financial instruments under a “**compensation arrangement**” established by the reporting issuer or by a subsidiary of the reporting issuer. The CSA introduced the exemption to reduce the regulatory burden on insiders that is associated with insider reporting of stock options and similar instruments. The exemption allows an issuer to file a single issuer grant report on SEDI.

A “**compensation arrangement**” includes, but is not limited to, an arrangement, whether or not set out in any formal document and whether or not applicable to only one individual, under which cash, securities or related financial instruments, including, for greater certainty, options, stock appreciation rights, phantom shares, restricted shares or restricted share units, deferred share units, performance units or performance shares, stock, stock dividends, warrants, convertible securities, or similar instruments, may be received or purchased as compensation for services rendered, or otherwise in connection with holding an office or employment with a reporting issuer or a subsidiary of a reporting issuer.

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