



February 19, 2010

Dear Sirs/Mesdames:

Upcoming Changes to the Insider Reporting Regime

The Canadian Securities Administrators have announced the adoption of a new national regime on insider reporting obligations and exemptions, which is scheduled to come into force on April 30, 2010. The new regime is set out in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (“NI 55-104” or the “Instrument”) and a related companion policy.

NI 55-104 provides a number of significant changes to the Canadian insider reporting regime, including:

- reducing the number of individuals required to insider report to a core group of “reporting insiders”;
- extending the concept of deemed or post-conversion beneficial ownership from the take-over bid regime to insider reporting;
- accelerating the deadline for filing insider reports from 10 calendar days to five, effective November 1, 2010;
- simplifying stock-based compensation reporting requirements and giving reporting issuers the option to file insider reports on stock-based compensation on behalf of their insiders; and
- requiring reporting by certain designated insiders for certain historical transactions.

A brief summary of each of these significant changes is set out below.

The “Reporting Insider” Concept

NI 55-104 reduces the number of insiders required to file insider reports by limiting the reporting requirements to persons who are defined as “reporting insiders”. This has been achieved by shortening the list of positions that are always required to report and by including a “basket” provision that captures any other insider that satisfies both of the following criteria:

- (i) the insider in the ordinary course receives or has access to undisclosed material facts or material changes concerning the reporting issuer prior to general disclosure; and
- (ii) the insider, 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.

Specifically, the Instrument defines “reporting insider” to mean an insider of a reporting issuer if the insider is:

- (a) the chief executive officer (“CEO”), chief financial officer (“CFO”) or chief operating officer (“COO”) and every director of the reporting issuer, or of a “significant shareholder” (defined below) of the reporting issuer or of a “major subsidiary” (defined below) of the reporting issuer;
- (b) a person or company responsible for a principal business unit, division or function of the reporting issuer;
- (c) a significant shareholder of the reporting issuer;
- (d) a “significant shareholder based on deemed or post-conversion beneficial ownership of the reporting issuer’s securities” (discussed below) and the CEO, CFO, COO and every director of the significant shareholder based on deemed or post-conversion beneficial ownership;
- (e) a management company that provides significant management or administrative services to the reporting issuer or a major subsidiary of the 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;
- (f) an individual performing functions similar to the functions performed by any of the insiders described in paragraphs (a) to (e);
- (g) 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
- (h) 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.

Accordingly, rather than requiring all senior officers to report, the core group of insiders that are always required to file insider reports under the Instrument includes the CEO, CFO and COO. Individuals holding other offices will only have to report if they meet one of the criteria in (b), (c), (d) or (f) above or if the two criteria of access to information and power or influence are met. As a result, the reporting requirements may apply to certain individuals who satisfy the two specified criteria of access to information and power or influence but who may not currently be required to file insider reports because they may not technically be insiders under securities legislation.

The Instrument also amends the percentage threshold in the definition of “major subsidiary” (currently found in National Instrument 55-101 *Insider Reporting Exemptions*) from 20% of consolidated assets or revenues to 30% of consolidated assets or revenues. This will reduce the number of insiders who will be reporting insiders since the definition of “reporting insider” includes various persons or companies at the

subsidiary level. To illustrate, a director of a subsidiary the assets or revenues of which comprise 25% of the reporting issuer's consolidated assets or revenues on a consolidated basis will no longer be required to file insider reports, since the subsidiary will no longer be a major subsidiary.

Concept of "Deemed Beneficial Ownership"

Significant shareholders are included in the definition of reporting insider. Beneficial ownership of, control or direction over, securities with more than 10% of the voting rights attached to a reporting issuer's securities are the defining attributes of a significant shareholder.

NI 55-104 introduces the concept of a "significant shareholder based on deemed or post-conversion beneficial ownership", which is intended to prevent persons from circumventing the disclosure threshold by holding convertible securities rather than the underlying securities directly. Similar to the take-over bid regime, a shareholder is considered or deemed to beneficially own any securities that may be acquired within 60 days. Accordingly, a shareholder who holds less than 10% of the votes attached to outstanding securities of a reporting issuer may be a reporting insider as a result of holding convertible securities, such as warrants or other rights to acquire securities.

Acceleration of the Filing Deadline

Commencing on November 1, 2010, the Instrument accelerates the filing deadline for reporting by reporting insiders of changes in ownership of, or control or direction over, securities of a reporting issuer from 10 calendar days to five. However, the current 10 day period for filing initial reports when a person first becomes a reporting insider of a reporting issuer is preserved under NI 55-104.

Stock-Based Compensation Requirements

The Instrument includes two changes intended to simplify and facilitate reporting of stock-based compensation.

First, NI 55-104 provides a broad definition of "compensation arrangements" which includes stock options, stock appreciation rights, phantom shares, restricted shares or restricted share units, deferred share units, performance units or performance shares, stock dividends, warrants, convertible securities, or similar instruments, which may be received or purchased as compensation for services rendered or in connection with holding an office or employment with a reporting issuer or subsidiary. By re-grouping all these stock-based compensation arrangements in a single definition, the reporting requirements will apply consistently to all stock-based compensation arrangements.

Second, the Instrument allows reporting issuers to file on the System for Electronic Disclosure by Insiders (SEDI) an "issuer grant report" with respect to any acquisitions of securities by its directors and officers or by the directors or officers of a major subsidiary, pursuant to a compensation arrangement. In such cases, provided that the reporting issuer has also previously disclosed the existence and material terms of the compensation arrangement, the directors and officers who are also reporting insiders of the reporting issuer will be exempt from the insider reporting requirement to file an insider report about the grant by the ordinary filing deadline and could instead file an alternative summary report on an annual basis.

Report by Certain Designated Insiders for Certain Historical Transactions

NI 55-104 provides that the CEO, CFO and COO and each director of an issuer may, in certain cases, be designated or determined to be insiders of a second issuer. These individuals are required to file, within 10 calendar days of being designated or determined to be an insider of the second issuer, insider reports

for transactions involving securities of the second issuer for a historical period of up to six months. For example, if an issuer (the first issuer) becomes an insider of a reporting issuer (the second issuer), the CEO, CFO, COO and every director of the first issuer are designated or determined to be an insider of the second issuer and must file insider reports in respect of transactions relating to the second issuer that occurred in the previous six months. Similarly, if a reporting issuer (the first issuer) becomes an insider of another issuer (the second issuer), the CEO, CFO, COO and every director of the second issuer is designated or determined to be an insider of the first issuer and must file insider reports in connection with transactions relating to the first issuer that occurred in the previous six months. This requirement addresses concerns over directors and officers of a company attempting to acquire a significant interest in another issuer by “front-running” the acquisition through personal purchases of shares of such other issuer.

If you have any questions or would like more information, please contact us as set out below:

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