

## New Exemptions from certain insider reporting Requirements

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The Canadian Securities Administrators (the "CSA") are in the process of introducing an electronic filing system for insider reports. This system was originally supposed to come into force at the same time as National Instrument 55-101 ("NI 55-101") which provides for certain exemptions from the obligation to file insider reports. Although the implementation of the electronic filing system for insider reports has been temporarily delayed, the CSA nevertheless decided to adopt NI 55-101, which came into force on May 15, 2001.

As a general rule, an insider, i.e. a senior officer or director of a reporting issuer (a company that has made a public offering of its securities) or one of its subsidiaries, or the holder of more than ten percent (10%) of the voting shares of a reporting issuer, must file an initial report within 10 days of becoming an insider and, thereafter, within 10 days of each transaction which modifies the number of securities of the issuer that are beneficially held by the insider.

NI 55-101 provides exemptions from the obligation to file an insider report under certain circumstances. Essentially, these exemptions fall into four categories:

1. First, an exemption is now provided for certain senior officers and directors of subsidiaries of a reporting issuer and of corporate affiliates of insiders who neither hold securities of the reporting issuer in significant amounts nor have any knowledge of undisclosed material information, the nature of which could affect the decision of a reasonable investor. More specifically, a director or senior officer of the subsidiary of a reporting issuer or of a corporate affiliate of an insider of a reporting issuer<sup>1</sup> is **exempted** from the obligation to produce insider reports, **except in the following cases:**

- a) the insider receives information or has access to information, in the ordinary course of business, pertaining to material facts or material changes concerning the reporting issuer before they are made public;
- b) the insider is a director or senior officer of a major subsidiary (i.e., a subsidiary the assets or revenues of which represent at least ten percent (10%) of the value of the consolidated assets or the consolidated revenues of the reporting issuer);
- c) the individual qualifies as an insider of a reporting issuer in a capacity other than as a director or senior officer of the subsidiary or of a corporate affiliate of an insider of a reporting issuer, as may be the case; or
- d) in the case of a director or senior officer of the corporate affiliate of an insider, where the insider is a director or senior officer of a company that provides the reporting issuer, or a subsidiary of such issuer, with goods or services or which has entered into contractual agreements with the reporting issuer or one of its subsidiaries, and the nature and importance of the goods or services provided, or of the contractual agreements, could be reasonably expected to have a significant effect on the market price or value of the reporting issuer's securities.

The reporting issuer is nonetheless required to maintain an up-to-date list of all insiders who have been exempted from the obligation to file insider reports pursuant to the exemption described above;

<sup>1</sup> This exemption does not apply in Québec, since a director or officer of a company that is an affiliate of an insider of a reporting issuer is not deemed to be an insider under the Securities Act (Québec).



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2. **Second**, the directors and senior officers of a reporting issuer, or subsidiary of such issuer, may, in most cases, make an annual declaration regarding the acquisition of securities under automatic securities purchase plans<sup>2</sup>. A director or senior officer of a reporting issuer or subsidiary of such issuer, other than one who holds or exercises control over more than ten percent (10%) of the voting rights<sup>3</sup>, is **exempted** from the obligation to produce insider reports, as required under Canadian securities legislation, at the time of acquisition of securities under an automatic securities purchase plan, provided that each such acquisition is disclosed within 90 days of the end of the calendar year in which it was made;
3. **Third**, an issuer that makes an offer to repurchase securities under a normal course issuer bid may, from now on, file a report within ten (10) days of the end of the month in which the acquisition occurred; and
4. **Finally**, insiders may now declare, at the time of their next insider report, any changes in their beneficial ownership of securities resulting from certain issuer events that affect all holdings of a class of securities in the same manner, such as a stock dividend, stock split, consolidation, amalgamation, merger or corporate reorganization.

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<sup>2</sup> Includes any subscription plan, i.e. a dividend or interest reinvestment plan, a stock dividend plan or any other such plan, provided that the number of securities which may be acquired, as well as the price to be paid, are set out beforehand in the plan document.

<sup>3</sup> In Québec, this ten percent (10%) threshold applies to each class of voting shares.

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