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Dear Sirs/Mesdames:

RE: PROPOSED AMENDMENT TO NATIONAL INSTRUMENT 55-104 INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS RELATING TO INVESTMENT FUNDS AND CERTAIN STRUCTURE PRODUCTS (THE "PROPOSAL")

The Canadian Forum for Financial Markets (CFFiM) /Forum Canadien des Marchés Financiers is dedicated to advancing proposals that foster healthy, competitive financial markets and a resilient Canadian economy.

Insider reporting requirements play an important role in increasing market transparency, integrity, and price efficiency. Insider activity is made visible to investors and regulators to minimize abuse. We offer the below constructive analysis as a solutions partner to meet these policy goals while stimulating capital raising, regulatory modernization and inclusive growth for the national competitiveness needed to meet the next decades' challenge

EXECUTIVE SUMMARY

National Instrument 55-104, Insider Reporting Requirements and Exemptions Relating to Investment Funds and Certain Structured Products (NI 55-104) contains extensive insider reporting requirements. These requirements include both defined and undefined terms and can be subject to differing interpretations, which should be assessed on a reasonable, good faith basis.

A proper cost benefit analysis has not been provided. Such an analysis specifies the problem with supporting evidence, chooses the least burdensome effective option based on that evidence and clearly quantifies the costs and benefits of doing so.

The Proposal eliminates an available exemption without the identification of a problem or the disclosure of any supporting data. Once this is produced, targeted solutions can be considered.

The problem and the underlying data should have sufficient scale to meet any proposed additional disclosure requirements.

A. THE CURRENT INSIDER REPORTING REQUIREMENTS

NI 55-104 contains extensive insider reporting requirements. These requirements include both defined and undefined terms and can be subject to differing interpretations, which should be assessed on a reasonable, good faith basis.

These insider reporting requirements and key (un)defined terms are summarized as follows:

The Primary Insider Reporting Requirement

National Instrument 55-104, Insider Reporting Requirements and Exemptions (NI 55-104) sets out the reporting requirements for reporting insiders,¹ of a reporting issuer. Except in Ontario, pursuant to the primary insider reporting requirement, a reporting insider must file:

- An initial report within 10 days of becoming a reporting insider disclosing the reporting insider's (in)direct ownership or control of securities of the reporting issuer and interest in related financial instrument involving the security of the reporting issuer²
- A subsequent report within 5 days of a change in the reporting insider's (in)direct ownership or control of securities of the reporting issuer or interest in related financial instrument involving a security of the reporting issuer.³

In Ontario, functionally similar requirements are found in s. 107 of the Securities Act (Ontario).⁴

There are also reporting requirements in connection with convertible or exchangeable securities⁵, and supplemental insider reporting requirements for both other and prior agreements, arrangements, or understandings.⁶

In summary, existing insider reporting rules include and extend beyond direct ownership of the reporting issuer's shares and capture a broad range of derivative and economically equivalent positions.

¹ Including persons and companies determined to be insiders for the purposes of this instrument in accordance with section 1.2(1)

² Section 3.2 of NI 55-104

³ Section 3.3 of NI 55-104

⁴ Section 107 (1) Within 10 days of becoming an insider or within such other time period as may be prescribed, a person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall file a report disclosing, in the prescribed manner and form, any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer and any interest in, or right or obligation associated with, a related financial instrument and the insider shall make such other disclosure as may be required by the regulations. 2006, c. 33, Sched. Z.5, s. 10.

(2) Within 10 days, or within such other time period as may be prescribed, of any change in the direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or any interest in, or right or obligation associated with, a related financial instrument, an insider of a reporting issuer, other than a mutual fund, shall file a report disclosing, in the prescribed manner and form, such change and the insider shall make such other disclosure as may be required by the regulations. 2006, c. 33, Sched. Z.5, s. 10.

⁵ Section 3.4 of NI 55-104

⁶ Sections 4.1 and 4.2 of NI 55-104

Key (Un)defined Terms

A related financial instrument is broadly defined to include i) an instrument, agreement, security or exchange contract, the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or, (ii) any other instrument, agreement, or understanding that affects, directly or indirectly, a person or company's economic interest in a security or an exchange contract, at a minimum in certain provinces.⁷ Related financial instruments, economic interest, and economic exposure are further broadly described in Companion Policy 55-104CP.

A control person or company is defined in NI 55-104⁸. The meaning of control or direction is also set out in section 3.3 of Companion Policy 55-104CP.

“Material component” is not defined. Section 9.4 of Companion Policy 55-104 CP states that in determining materiality, similar considerations to those involved in the concepts of material fact and material change would apply. Material fact and material change can be judgment based.

i) Single-Issuer ETFs

A single issuer ETF, is often an investment fund that has filed a prospectus and is a reporting issuer.

Within 10 days of becoming a reporting insider of the single-issuer ETF, the reporting insider must disclose:

- Direct and indirect ownership or control of ETF units
- Interests in related financial instruments involving ETF units.
- For subsequent reports, within 5 days of any change in ownership or control of ETF units or in interests in related financial instruments involving ETF units.

The ETFs' purchase of the underlying shares is disclosed through the ETF's portfolio holdings disclosure⁹. For a single-issuer ETF, the market can usually quickly determine that the fund holds a company's shares because that is the fund's stated investment objective and portfolio disclosure confirms the holdings.

The underlying shares purchased by single-issuer ETFs, may be and are often, reporting issuers. Reporting issuer insiders of these underlying are shares are subject to reporting obligations for the underlying shares and for their *related financial instruments*.

ii) American Depositary Receipts, Canadian Depositary Receipts and Structured Notes

An American Depositary Receipt (ADR) is a negotiable certificate issued by a U.S. depository bank that represents a specified number of shares (or a fraction of a share) of a non-U.S. company, traded on U.S. markets in U.S. dollars, settled through U.S. clearing systems.

⁷ Section 1.1(1) of NI 55-104

⁸ Section 1.1(3) of NI 55-104

⁹ For example: Annual Financial Statements (NI 81-105 s. 2.1(1)(e), Interim Financial Statements NI 81-106 s. 2.3(1)(e), Management Reports of Fund Performance (MRFPs, NI 81-106 Part 4), ETF Fact Updates (NI 41-101, Form 41-101F4), Quarterly Performance Disclosure (NI 81-106, Part 6)

A Canadian Depositary Receipt (CDR) is a negotiable certificate issued by a Canadian depositary that represents a beneficial interest in a specified number (or fraction) of shares of a foreign company, traded on Canadian exchanges in Canadian dollars, with a built-in currency hedge designed to keep the CDR's price aligned with the foreign share after FX effects.

ADRs and CDRs are receipts representing shares of underlying foreign companies (which may be reporting issuers in their home jurisdictions), and structured notes are debt securities issued by banks (which are reporting issuers). ADRs, CDRs, and structured notes are not reporting issuers.

The underlying shares purchased by CDRs, ADRs and structured notes may be and are often reporting issuers. Reporting issuer insiders are subject to reporting obligations for the underlying shares and *for their related financial instruments*.

iii) Exemptions

Exempt persons and transactions include those premised on concepts of "material component" and "investment control." These are:

- An agreement, arrangement or understanding which does not involve, directly or indirectly, i) a security of the reporting issuer; ii) a related financial instrument involving a security of the reporting issuer; or iii) any other derivative in respect of which the underlying security, interest, benchmark or formula is or includes as a *material component* a security of the reporting issuer or a related financial instrument involving a security of the reporting issuer (s. 9.7(a) of NI 55-104)
- The acquisition or disposition of a security, or an interest in a security of an investment fund, provided that the securities *do not form a material component* of the investment fund's market value (s. 9.7 (f):of NI 55-104 hereafter "the Investment Fund Exemption") or
- The acquisition or disposition of a security, or an interest in a security, of an issuer that holds directly or indirectly securities of the reporting issuer, if
 - (i) the reporting insider is not the control person of the issuer and
 - (ii) the reporting insider does not have or share investment control over the securities of the reporting issuer (s. 9.7(g)) of NI 55-104 hereafter "the Control Exemption").

iv) Significance

This means that the following is reportable:

- An agreement that involves (in)directly the security of a reporting issuer, *a related financial instrument* to that security or any other derivative as a *material component* of the security.
- The purchase or sale of a security that is a *material component* of an investment funds market value.

In addition, a control person of a reporting issuer who has or '*shares investment control*' over the securities of that security must report buys, sells, and interests in that security.

B. THE PROPOSAL

i) A Substantive Amendment Rather Than a Clarification

The Proposal is described as a clarification to the insider reporting applicable to transactions involving investment funds, certain structured products, such as structured notes, ADRs and CDRs that are based on securities of the reporting insider's reporting issuer.

Rather than a clarification, the Proposal is a substantive amendment. The following, as a substantive amendment, is proposed (the "Proposed Amendment"):

9.8 Paragraph 9.7(g) [the Investment Fund Exemption] does not apply to the acquisition or disposition of a security, or an interest in a security, of an issuer if

(a) the issuer is an investment fund, or

(b) the value or market price of the security, or the interest in a security, is derived from, referenced to or based on an underlying security, interest, benchmark or formula that is, or includes as a *material component*, a security of the reporting issuer or a related financial instrument involving a security of the reporting issuer. (the "proposed amendment")

The Proposed Amendment eliminates the control exemption for investment funds who must use the investment fund exemption. For single-issuer ETFs, the securities of a reporting issuer are a material component of the investment fund's market value. This effectively eliminates the investment fund exemption for insiders of the reporting issuers which single-issuer ETFs invest in. The insider already has to report trades in the underlying security, so that eliminating the exemption for a single issuer ETFs may simply duplicate disclosure. The insider may also not be involved in the ETF.

ii) A Lack of Supporting Evidence

According to the Proposal, the Proposed Amendment is due to "recent interest" in certain investment funds for which securities of a reporting issuer would be expected to form a material component of the investment fund's market value, such as single-issuer exchange traded funds.

Also, according to the Proposal, the Control Exemption was not intended to be available for investment funds, who should be excluded and use the Investment Fund Exemption. The Investment Fund Exemption is unavailable to single issuer ETFs.

No problem is explained or substantiating date to a problem provided. Given the breadth of the existing reporting regime, the Proposal does not clearly demonstrate a material reporting gap, leaving the appearance of adding reporting without apparent basis.

The Ontario Securities Commission (OSC) Cost/Benefit Analysis

Unfortunately, the OSC is the only member of the CSA required by statute to conduct a cost/benefit analysis.¹⁰

According to the OSC's cost/benefit analysis:

- There is a “potential gap” in NI 55-104 in that an insider may take the position that they can rely on the Investment Fund Exemption to enter into transactions involving single issuer ETFs or certain structured products that are based on securities of the insider's reporting issuer without having to report such transactions.
- The Proposal addresses “the concern” that the introduction of certain new types of financial products to Canadian markets that reference securities of an issuer, such as single issuer ETFs, CDRs and ADRs, may create opportunities for insiders to enter into transactions involving financial products that derive their value from underlying interests that are, or include as *a material component*, a security of the insider's reporting issuer or *a related financial instrument* involving a security of the reporting issuer, without filing insider reports for such transactions.

Pursuant to s. 2.1.6 of the *Securities Act*, R.S.O. 1990, c. S. 5 (“Securities Act”), the business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

Contrary to s. 2.16, no problem has been defined - the potential gap or concern is not explained and no evidence is provided.

According to the OSC's cost/benefit analysis, the Proposal provides regulatory certainty as to insider reporting obligations in NI 55-104. It is unclear how this is achieved. For example, ‘material component’ remains defined.

Finally, according to the OSC's cost/benefit analysis, the Proposal does not give rise to material legal or compliance costs for insiders or issuers. Legal analysis of what counts as a ‘material component’ can be substantial. In any event, costs are narrowly defined. Wider market impacts are not considered. For example, unnecessary administrative reporting obligations may reduce trading, liquidity and market demand.

C. RECOMMENDATIONS

Canada's insider reporting rules are extensive and layered. They can be subject to differing reasonable interpretations.

¹⁰ Section 143.2(2) of the Ontario Securities Act mandates that the OSC publish a notice of its proposed rule, which must include “a description of the anticipated costs and benefits of the proposed rule.” This provision requires the OSC to provide both qualitative and quantitative analyses of the anticipated costs and benefits associated with a proposed rule. Additionally, Section 2.1(6) of the Ontario Securities Act emphasizes that business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

The problem being solved for must be clearly identified with the supporting data to that problem. The data provided should delineate volume and scale so as to extrapolate systemic risk from statistical outliers. The data produced should include, with respect to single issuer ETFs, ADRs, CDRs and structured product, from August 2025¹¹:

- i) The number of filings made pursuant to the Investment Fund Exemption and the Control Exemption;
- ii) The number of detected misuses for of the Investment Fund Exemption and the Control Exemption, the basis for the misuse and the resolution achieved;
- iii) The number of referrals to enforcement and the basis for the referral.
- iv) The staff and market interpretations for each of i) through iii) and their basis.
- v) Market impacts on liquidity, trading and demand.

Based on the problem and its scale, targeted solutions can be considered.

Respectfully submitted,

The Canadian Forum for Financial Markets

www.CFFiM-FCMFi.ca

¹¹ According to the Proposal, single-issuer exchange traded funds were launched in the Canadian market in August 2025 and that structured notes, ADRs and CDRs have been launched for a wide variety of issuers.