Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

Request for Comment

Proposed Regulation to amend Regulation 55-101 respecting Insider Reporting Exemptions
and
Proposed amendments to Policy Statement to Regulation 55-101 respecting Insider Reporting Exemptions

Background

The Canadian Securities Administrators (the CSA or we) are publishing for comment proposed Regulation to amend Regulation 55-101 respecting Insider Reporting Exemptions (Regulation 55-101) and proposed amendments to Policy Statement to Regulation 55-101 respecting Insider Reporting Exemptions (Policy Statement 55-101).

Regulation 55-101 and Policy Statement 55-101 provide exemptions from the obligation to file insider reports under Canadian securities legislation where the policy reasons for insider reporting do not apply. The CSA adopted Regulation 55-101 in 2001 to make certain routine exemptions from the insider reporting requirement available automatically. We amended Regulation 55-101 in 2005 to add some additional routine exemptions.

We believe the recent amendments to Regulation 55-101 and Policy Statement 55-101 have been successful. The most significant amendment introduced a new exemption for senior officers based on the CSA title inflation initiative. This amendment codified relief that CSA members had previously granted on an exemptive relief basis a number of times since 2002. The amendments also included several important enhancements to the existing exemption in Regulation 55-101 relating to automatic securities purchase plans.

Current amendments (Phase 1)

Since the recent amendments, we have received comments from a number of issuers about the record-keeping requirements in Part 4 of Regulation 55-101. These issuers have indicated that the present record-keeping requirements are unduly onerous, particularly for larger issuers that have a large number of subsidiaries. They have also expressed concern that, even after the most recent amendments based on the title inflation initiative, Canadian securities legislation continues to require too many persons to file insider reports, particularly when compared to the requirements of various foreign jurisdictions.

In view of these comments and further consideration of these requirements, we are proposing to delete the record-keeping requirements in Part 4 of Regulation 55-101 and instead include these record-keeping functions as an example of a best practice in Policy Statement 55-101. We recognize that issuers may choose to adopt different record-keeping practices that are tailored to their particular circumstances.

We are publishing a regulation to amend Regulation 55-101 and black-lined versions of Regulation 55-101 and Policy Statement 55-101 (Appendices A, B and C). Because of differences in the current insider reporting requirements, Part 3 of Regulation 55-101 does not apply in Quebec. The definition of “ineligible insider” and section 5.2 of Regulation 55-101 are also different in Quebec than in other provinces. If certain amendments proposed to the legislation in Quebec come into force before the proposed amendment to Regulation 55-101, the final form of Regulation 55-101 may include consequential amendments to address these changes.

Proposed future amendments (Phase 2)

The currently proposed changes to Regulation 55-101 and Policy Statement 55-101 are an interim step. As part of the CSA’s efforts to harmonize and streamline securities legislation, the CSA plan to adopt harmonized insider reporting requirements across Canada. We expect to do this by amending Regulation 55-101 to include the insider reporting requirements as well as appropriate exemptions.

As part of this initiative, we will review whether the current insider reporting requirements are appropriate or whether the insider reporting system would be more effective it if focused the

reporting obligation on a smaller group of insiders. In addition, we may also consider accelerating the time frames for filing insider reports as we improve the viability of the System for Electronic Disclosure by Insiders (SEDI). For example, as discussed above, a number of issuers have expressed the concern that our current insider reporting rules require too many individuals to file insider reports. Although Regulation 55-101 now generally exempts insiders who do not routinely have access to material information about the reporting issuer before it is publicly disclosed and who may not therefore be considered "true" insiders, the number of insiders required to file reports can still be substantial. However, reducing the number of insiders required to file reports would further decrease the amount of information in the market about trades by those insiders.

We plan to consider these issues further and conduct research that will compare our current insider reporting requirements with those in other countries. This will help us to determine whether we can reduce the regulatory burden by requiring a smaller group of insiders to file insider reports, without compromising the market information that the insider reports provide or the objective of deterring improper insider trading.

Before we adopt the national insider reporting requirements, we will seek input from people who file insider reports and those who use the information provided by the reports.

Substance and purpose of proposed amendments

Proposed changes to Regulation 55-101

We propose to make three substantive changes to Regulation 55-101:

1. Definition of major subsidiary

The definition of "major subsidiary" in section 1.1 of Regulation 55-101 will be changed to increase the relevant percentages from 10 to 20%. This change means that a subsidiary would be a major subsidiary of a reporting issuer only if its assets are 20% or more of the consolidated assets of the reporting issuer or its revenues are 20% or more of the consolidated revenues of the reporting issuer. This change may increase the number of insiders able to rely on the exemptions in Parts 2 and 3 of Regulation 55-101 because directors or senior officers of a subsidiary that represents more than 10% but less than 20% of the assets or revenues of the reporting issuer will no longer be ineligible insiders (as defined in section 1.1).

2. Insider lists and policies

Part 4 - Insider Lists and Policies will be repealed. This change should make it easier for eligible insiders to rely on the exemptions in Parts 2 and 3 of Regulation 55-101.

Part 4 currently requires

- an insider to notify the reporting issuer that the insider intends to rely on an exemption in Part 2 or 3;

- the reporting issuer to maintain a list of insiders who are relying on exemptions from the insider reporting requirements and a list of insiders who are not relying on the exemptions or file an undertaking with the securities regulatory authorities that it will make those lists available to the regulatory authorities on request; and

- the reporting issuer to advise its insiders that the reporting issuer has established policies and procedures relating to insider trading and that, as part of those policies and procedures, the issuer is required to maintain the lists of insiders referred to above.

As we understand that the current requirements may discourage some insiders from relying on exemptions that they are eligible to use, this change should reduce the number of insiders filing insider reports. However, reporting issuers should consider the detailed best practices for issuers for disclosure and information containment set out in National Policy 51-201 *Disclosure Standards*. Reporting issuers may also wish to consider preparing and periodically updating a list of the persons working for them or their affiliates who have access to material facts or material changes concerning the reporting issuer before those facts or changes are generally disclosed as part of their internal policies and procedures relating to insider trading. Reporting issuers should also be aware that some jurisdictions may request additional information,

including asking the reporting issuer to prepare and provide a list of insiders, for example in the context of an insider reporting review.

3. ASPP exemption for stock option grants
We propose to add a new subsection 5.2(3) to make it clear that certain insiders can rely on the automatic securities purchase plan (ASPP) exemption for grants of stock options and similar securities only if the reporting issuer has publicly disclosed certain information about the grant. This will allow those insiders to defer filing insider reports about these transactions, while still ensuring that the information is available to the market on a timely basis.

Proposed changes to Policy Statement 55-101
Policy Statement 55-101 will be revised in two ways.

1. Part 4 will clarify the best practices for reporting issuers relating to insider lists and trading policies.

2. Part 5 will provide additional guidance on the ASPP exemption.

Alternatives considered
As discussed above, the amendments are intended to clarify Regulation 55-101 or to streamline requirements. We considered waiting and making these changes as part of a national insider reporting rule. However, the national insider reporting rule will likely not be in place until 2008, so we are proposing to adopt the Phase 1 amendments first to help improve the effectiveness of the current insider reporting system and to reduce the regulatory burden associated with insider reporting.

Request for Comments
We welcome your comments on the proposed Regulation to amend Regulation 55-101 and proposed amendments to Policy Statement 55-101. In addition to any general comments you may have, we also invite comments on the following specific questions:

1. The exemption in Part 5 of Regulation 55-101 that allows insiders to defer reporting acquisitions under an automatic securities purchase plan is currently available only to directors and senior officers of the reporting issuer or a subsidiary of the reporting issuer. Should we make this exemption available to persons who own or control more than 10% of the voting securities of a reporting issuer? For example, this would allow these persons to participate in a dividend reinvestment plan and report on the additional shares they acquire in this way within 90 days of the end of the calendar year. If so, should there be limits on the number or percentage of securities that the insider can acquire before being required to file a report?

2. We are proposing to let insiders who are executive officers or directors of a reporting issuer rely on the ASPP exemption in section 5.1 of Regulation 55-101 for the acquisition of stock options or similar securities granted to the insider if the reporting issuer has previously disclosed in a press release filed on SEDAR the existence and material terms of the grant.
   (a) Could the same result be achieved by requiring the reporting issuer to file a notice on SEDAR, rather than issuing a press release?
   (b) In the future, rather than require issuers to file a press release on SEDAR, should we enhance the System for Electronic Disclosure by Insiders (SEDI) to allow reporting issuers to disclose grants of stock options and issuer derivatives like deferred share units, restricted share awards and long term incentive plan units in a report of the issuer? This report could be analogous to the “issuer event” report required under section 2.4 of Regulation 55-102 respecting System for Electronic Disclosure by Insiders (SEDI).

3. The current concern in the United States about options backdating illustrates that the market is keenly interested in the timing of stock option grants. We understand that some investors time their own market purchases of securities of an issuer based on option grants to insiders that have been publicly disclosed. We believe that stock options or similar securities granted to executive officers or directors need to be disclosed on a timely basis – either in an insider report filed on SEDI within 10 days or a press release filed by the issuer on SEDAR. We are willing to allow other insiders to rely on the ASPP exemption for grants of stock options and similar securities, provided the plan under which they are granted meets the definition of an

ASPP, the conditions of the exemption are otherwise satisfied, and the insider is not making a discrete investment decision in respect of the grant. Does disclosure of grants of options and issuer derivatives to executive officers and directors provide a greater "signalling" function or "deterrence" value than disclosure of similar grants made to other insiders?

Please submit your comments in writing on or before January 25, 2007. If you are not sending your comments by email, please include a diskette containing the submissions (in Windows format, Word).

Address your submission to the following CSA member commissions:

British Columbia Securities Commission

Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission

Please deliver your comments **only** to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will also be posted to the BCSC web-site at www.bcsc.bc.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of:

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The text of the proposed amended regulation and policy statement follows or can be found elsewhere on a CSA member website.

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