

**REGULATION 55-103 RESPECTING INSIDER REPORTING FOR CERTAIN DERIVATIVE
TRANSACTIONS (EQUITY MONETIZATION)**

PART 1 DEFINITIONS

1.1 Definitions – In this Regulation

“compensation arrangement”¹ includes, but is not limited to, any plan, contract, authorization or arrangement, whether or not set forth in any formal document and whether or not applicable to only one individual, under which cash, securities, options, SARs, phantom stock, warrants, convertible securities, restricted shares or restricted share units, performance units and performance shares, or similar regulations may be received or purchased;

“derivative”² means an regulation, agreement or security, the market price, value or payment obligations of which are derived from, referenced to or based on an underlying security, interest, benchmark or formula;

“economic exposure”³ in relation to a reporting issuer means the extent to which the economic, financial or pecuniary interests of a person or company are aligned with the trading price of securities of the reporting issuer or the economic, financial or pecuniary interests of the reporting issuer;

“economic interest in a security” means the extent to which a person or company is entitled to receive, bears or is subject to

- (a) an economic, financial or pecuniary⁴ reward, benefit or return from a particular security, or
- (b) an economic, financial or pecuniary loss or risk of loss in respect of a particular security,

and includes, without limitation, the extent to which such person or company has or shares the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in such security or a transaction which directly or indirectly involves such security;

“effective date” means the date specified in Part 5 of this Regulation;

“exemptive relief” has the same meaning as is ascribed to that term in National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*;

“insider report” means a report in the form prescribed for insider reports under securities legislation;

“NI 55-101” means National Regulation 55-101 *Exemption from Certain Insider Reporting Requirements*;

“security of a reporting issuer” shall be deemed to include⁵

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; and

- (b) a security, the market price of which varies materially with the market price of a security of the reporting issuer; and

“stock appreciation right” (“SAR”)⁶ means a right, granted by an issuer or any of its subsidiaries as compensation for services rendered or otherwise in connection with office or employment, to receive a payment of cash or an issue or transfer of securities based wholly or in part on changes in the trading price of publicly traded securities.

PART 2 REPORTING FOR CERTAIN DERIVATIVE TRANSACTIONS

2.1 Reporting Requirement – If an insider of a reporting issuer

- (a) enters into an agreement, arrangement or understanding of any nature or kind, the effect of which is to alter either or both of
 - i) the insider’s economic exposure to the reporting issuer, or
 - ii) the insider’s economic interest in a security of the reporting issuer; and
- (b) is not otherwise required to file an insider report in respect of such agreement, arrangement or understanding under any provision of Canadian securities legislation, then

the insider shall file a report in accordance with Section 3.1 of this Regulation.

2.2 Exemptions – Section 2.1 does not apply to

- (a) an agreement, arrangement or understanding which does not involve, directly or indirectly, a security of the reporting issuer or a derivative in respect of which the underlying interest is or includes as a material component a security of the reporting issuer;
- (b) an agreement, arrangement or understanding in the nature of a compensation arrangement between the insider and the reporting issuer or an affiliate of the reporting issuer if
 - (i) the existence and material terms of the compensation arrangement are, or are required to be, described in
 - (A) the annual audited financial statements of the reporting issuer;
 - (B) an annual filing of the reporting issuer relating to executive compensation, or any other filing required to be made under any provision of Canadian securities legislation; or
 - (C) any public filing required to be made under the rules or policies of a stock exchange or market on which securities of the reporting issuer are listed or trade; or
 - (ii) the terms of the compensation arrangement are set out in a written document, and the alteration to economic exposure or economic interest referred to in section 2.1 occurs as a result of

the satisfaction of a pre-established condition or criterion described in the written document and does not involve a discrete investment decision by the insider;⁷

- (c) a person or company exempt from the insider reporting requirements under a provision of NI 55-101, to the same extent and on the same conditions as are applicable to such exemption;
- (d) a person or company who has obtained exemptive relief in a jurisdiction from the insider reporting requirements of that jurisdiction, to the same extent and on the same conditions as are applicable to such exemptive relief; or
- (e) a transfer, pledge or encumbrance of securities by a person or company for the purpose of giving collateral for a debt made in good faith so long as there is no limitation on the recourse available against the person or company for any amount payable under such debt.

2.3 Existing agreements which continue in force – If an insider of a reporting issuer, prior to the effective date of this Regulation, entered into an agreement, arrangement or understanding in respect of which

- (a) the insider would have been required to file an insider report under this Regulation if the agreement, arrangement or understanding had been entered into on or after the effective date, and
- (b) the agreement, arrangement or understanding remains in effect on or after the effective date of this Regulation,

then the insider shall file a report in accordance with Section 3.2 of this Regulation.

PART 3 FORM AND TIMING OF REPORT

3.1 A person or company who is required under Section 2.1 of this Regulation to file a report shall, within 10 days from the day on which the person or company enters⁸ into the agreement, arrangement or understanding described in Section 2.1 of this Regulation, or such shorter period as may be prescribed, file a report in the form prescribed for insider reports under securities legislation disclosing the existence and material terms of the agreement, arrangement or understanding.

3.2 A person or company who is required under Section 2.3 of this Regulation to file a report shall, within 10 days, or such shorter period as may be prescribed, from the effective date of this Regulation, file a report in the form prescribed for insider reports under securities legislation disclosing the existence and material terms of the agreement, arrangement or understanding.

PART 4 EXEMPTION

4.1 The regulator or the securities regulatory authority may grant an exemption from this Regulation, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

4.1 Despite section 4.1, in Ontario only the regulator may grant such an exemption.

PART 5 EFFECTIVE DATE

5.1 Effective Date - This Regulation comes into force on •

¹ Although item 22 of Schedule I to the Regulation concerning securities includes a section on remuneration pursuant to plans, this term is not defined. The term “compensation arrangement” in the Regulation is similar to the definition of “plan” in Ont. Reg. 1015, Form 40 *Statement of Executive Compensation* (“OSC Form 40”). The concluding language from the definition of “plan” (reproduced in italics below) has been deleted as it is unnecessary in the present context and would have unduly narrowed the scope of the compensation arrangement exemption:

“plan” includes, but is not limited to, any plan, contract, authorization or arrangement, whether or not set forth in any formal document and whether or not applicable to only one individual, under which cash, securities, options, SARs, phantom stock, warrants, convertible securities, restricted shares or restricted share units, performance units and performance shares, or similar regulations may be received or purchased, *but does not include the Canada Pension Plan or similar government plans or any group life, health, hospitalization, medical reimbursement or relocation plan that does not discriminate in scope, terms or operation in favour of executive officers or directors of the issuer and is available generally to all salaried employees;*

² This term is not defined under Quebec securities legislation. The definition of “derivative” in the Regulation is similar to the definition of “derivative” in subsection 1.1(3) of OSC Rule 14-501 *Definitions*:

“derivative” means an regulation, agreement or security, the market price, value or payment obligations of which is derived from, referenced to or based on an underlying interest, other than a contract as defined for the purposes of the *Commodity Futures Act*

The above definition has been simplified to allow the definition to serve as a stand-alone definition in a Multilateral Regulation.

³ The concept of “economic exposure” also appears in section 6.2 of National Policy 46-201 *Escrow for Initial Public Offerings*.

6.2 Restrictions on dealing with escrow securities

Escrow restricts the ability of holders to deal with their escrow securities while they are in escrow. The standard form of escrow agreement sets out these restrictions. Except to the extent that the escrow agreement expressly permits, a principal cannot sell, transfer, assign, mortgage, *enter into a derivative transaction concerning*, or otherwise deal in any way with the holder’s escrow securities or any related share certificates or other evidence of the escrow securities. A private company, controlled by one or more principals of the issuer, that holds escrow securities of the issuer, *may not participate in a transaction that results in a change of its control or a change in the economic exposure* of the principals to the risks of holding escrow securities.

[Emphasis added.]

⁴ We have added a reference to “pecuniary interest” to the definition of “economic interest in a security” in the Regulation for the reason that the insider reporting requirements under U.S. securities legislation use this term. One of the objectives underlying the adoption of the Regulation is to introduce greater consistency in the reporting requirements under U.S. securities law and Canadian securities laws in relation to monetization arrangements. Under U.S. securities law requirements, insiders are generally required to report any transaction resulting in a change in “beneficial ownership” of equity securities of the issuer. For reporting purposes, a person is deemed to be the “beneficial owner” of securities if the person has a “pecuniary interest” in the securities. The term “pecuniary interest” in any class of equity securities is defined to mean “the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities”. See generally SEC Rule 16a-1(a)(2). Consequently, the reference to an “economic, financial or pecuniary reward, benefit or return” in the definition of “economic interest” in the Regulation is intended to clarify that insider transactions which are reportable under U.S. securities law requirements will also generally be covered by Canadian securities law requirements, unless covered by one of the exemptions.

⁵ This definition is compatible with the changes to section 92 of the Quebec Securities Act by section 625 of the *Loi sur l’Agence nationale d’encadrement du secteur financier*. The definition of “security of a reporting issuer” in the Regulation is substantially similar to the definition of that term in s. 76(6) of the *Securities Act* (Ontario).

⁶ This term is not defined under Quebec securities legislation. The definition of “stock appreciation right” is identical to the definition of that term in OSC Form 40.

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Subparagraph 2.2(b)(ii) provides an exemption for a compensation arrangement which is not publicly disclosed, and which has the effect of altering the insider's economic exposure to the reporting issuer, or the insider's economic interest in securities of the reporting issuer, if

- the compensation arrangement is described in a written document,
- the alteration occurs as a result of the satisfaction of a pre-established condition or criterion described in the document (such as the insider's retirement from office or ceasing to be a director), and
- the alteration does not involve a "discrete investment decision" by the insider.

Part 5 of NI 55-101 provides a similar exemption from the insider reporting requirements for securities which are acquired under an "automatic securities purchase plan". Section 4.2 of the Companion Policy to NI 55-101, Companion Policy 55-101 CP *Exemption from Certain Insider Reporting Requirements*, similarly refers to the concept of a "discrete investment decision".

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Under Canadian securities legislation, an insider is ordinarily required to file an insider report within 10 days from the day on which there is a change in the insider's direct or indirect beneficial ownership or control over securities of the reporting issuer. See, for example, s. 102 of the Quebec Securities Act. The 10-day period referred to in section 3.1 of the Regulation commences on the date the insider enters into the arrangement which satisfies the test in s. 2.1, since the arrangement may not involve a change in beneficial ownership or control over securities of the reporting issuer.

⁵ This definition is compatible with the changes to section 92 of the Quebec Securities Act by section 625 of the “*Loi sur l’Agence nationale d’encadrement du secteur financier*”. The definition of “security of a reporting issuer” in the Regulation is substantially similar to the definition of that term in s. 76(6) of the *Securities Act* (Ontario).

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⁷ Subparagraph 2.2(b)(ii) provides an exemption for a compensation arrangement which is not publicly disclosed, and which has the effect of altering the insider’s economic exposure to the reporting issuer, or the insider’s economic interest in securities of the reporting issuer, if

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- the alteration occurs as a result of the satisfaction of a pre-established condition or criterion described in the document (such as the insider’s retirement from office or ceasing to be a director), and
- the alteration does not involve a “discrete investment decision” by the insider.

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