

M.O., 2005-27**Order number V-1.1-2005-27 of the Minister of Finance dated 30 November 2005**

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING the Regulation 55-103 respecting insider reporting for certain derivative transactions (equity monetization)

WHEREAS subparagraph 20.1 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1) stipulate that the Autorité des marchés financiers may make regulations concerning the matters referred to in that paragraph;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS the draft Regulation 55-103 respecting insider reporting for certain derivative transactions (equity monetization) was published in the Supplement to the weekly Bulletin of the Commission des valeurs mobilières du Québec, volume 34, No. 36 of September 12, 2003;

WHEREAS on November 15, 2005, by the decision No. 2005-PDG-0363, the Authority made the Regulation 55-103 respecting insider reporting for certain derivative transactions (equity monetization);

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation 55-103 respecting insider reporting for certain derivative transactions (equity monetization) appended hereto.

30 November 2005

MICHEL AUDET,
Minister of Finance

Regulation 55-103 respecting insider reporting for certain derivative transactions (equity monetization)

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (20.1))

PART 1
DEFINITIONS**1.1. Definitions**

In this Regulation

“compensation arrangement” 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 instruments may be received or purchased;

“control person” means

(a) a person holding a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

(b) one or a combination of persons acting in concert by virtue of an agreement, arrangement, commitment or understanding and holding a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or

(c) a person or combination of persons holding more than 20% of the voting rights attached to all outstanding voting securities of an issuer, unless there is evidence that the holding does not affect materially the control of the issuer;

“credit derivative” means a derivative in respect of which the underlying security, interest, benchmark or formula is, or is related to or derived from, in whole or in part, a debt or other financial obligation of a reporting issuer;

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

“economic interest in a security” means

(a) a right to receive or the opportunity to participate in a reward, benefit or return from the security, or

(b) exposure to a loss or a risk of loss in respect to the security;

“exemptive relief” has the meaning ascribed to that term, in Québec, in Notice 12-201 relating to Mutual Reliance Review System for Exemptive Relief Applications adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2002-C-0243 dated July 15, 2002, and, elsewhere in Canada, in National Policy 12-201 Mutual Reliance Review System for Exemptive Relief Applications;

“reporting issuer” does not include a mutual fund that is a reporting issuer;

“SAR” means a stock appreciation right, which is 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;

“security of a reporting issuer” is deemed to include

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

(b) a security, the value or market price of which are derived from, referenced to or based on the value, market price or payment obligations of a security of the reporting issuer.

PART 2

REPORTING FOR CERTAIN DERIVATIVE TRANSACTIONS

2.1. Reporting Requirement

If an insider of a reporting issuer

(a) enters into, materially amends or terminates an agreement, arrangement or understanding of any nature or kind, the effect of which is to alter, directly or indirectly,

i. the insider’s economic interest in a security of the reporting issuer, or

ii. the insider’s economic exposure to the reporting issuer; and

(b) the insider is not otherwise required to file an insider report in respect of such event under any provision of Canadian securities legislation, then

the insider shall file an insider report.

2.2. Exemptions

Section 2.1 does not apply to

(a) an agreement, arrangement or understanding which does not involve, directly or indirectly, an interest in

i. a security of the reporting issuer, or

ii. a 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;

(b) an agreement, arrangement or understanding in the nature of a compensation arrangement established by 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 writing, 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 and does not involve a discrete investment decision by the insider;

(c) a person or company exempt from the insider reporting requirements by virtue of an exemption contained in Canadian securities legislation, 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;

(e) a transfer, pledge or encumbrance of securities by an insider 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 insider for any amount payable under such debt;

(f) to the receipt by an insider of a transfer, pledge or encumbrance of securities of an issuer if the securities are transferred, pledged or encumbered as collateral for a debt under a written agreement and in the ordinary course of business of the insider;

(g) to an insider, other than an insider that is an individual, that enters into, materially amends or terminates an agreement, arrangement or understanding which is in the nature of a credit derivative;

(h) a person or company who did not know and, in the exercise of reasonable diligence, could not have known of the alteration to economic exposure or economic interest described in section 2.1;

(i) the acquisition or disposition of a security, or an interest in a security, of an investment fund, provided that securities of the reporting issuer do not form a material component of the investment fund's market value; or

(j) the acquisition or disposition of a security, or an interest in a security, of an issuer which holds directly or indirectly securities of the reporting issuer, if:

- i. the insider is not a control person of the issuer; and
- ii. the insider does not have or share investment control over the securities of the reporting issuer.

2.3. Existing agreements entered into prior to effective date of Regulation

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 an insider report.

2.4. Existing agreements entered into prior to insider becoming an insider

If an insider of a reporting issuer, prior to the date the insider most recently became an insider of the reporting issuer, 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 date the insider most recently became an insider, and

(b) the agreement, arrangement or understanding remains in effect on or after the date the insider most recently became an insider,

then the insider shall file an insider report.

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 enters into, materially amends or terminates, as the case may be, 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.

3.3. A person or company who is required under Section 2.4 of this Regulation to file a report shall, within 10 days, or such shorter period as may be pre-

scribed, from the date the person or company most recently became an insider, 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. Exemption

(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.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 Definitions, adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0274 dated June 12, 2001, opposite the name of the local jurisdiction.

PART 5 EFFECTIVE DATE

5.1. Effective Date

This Regulation comes into force on December 30, 2005.

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