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## Insider Trading Reports

BY LLOYD MCLELLAN

*Key changes to filing deadlines, deemed beneficial ownership, reporting equity-based compensation and derivatives.*

Insiders of Canadian public companies are subject to new rules for reporting insider trading, effective April 30, 2010. Under National Instrument 55-104, Insider Reporting Requirements and Exemptions, the new rules:

- cut the deadline for filing insider trading reports from 10 to five calendar days, effective Oct. 31, 2010;
- narrow the specific list of company officers who must file reports under NI 55-104;
- require other insiders to file trading reports if they have access to material undisclosed information or have power or influence over the issuing company;
- clearly include convertible securities, such as options and warrants, within the 10-per-cent ownership threshold for 'significant shareholders' required to file reports; and,
- exempt insiders from the five-day deadline whenever the issuer of stock options files a grant report, allowing the insider to file a single annual report.

### **Accelerated Filing Deadline**

The deadline for reporting trades by insiders has been shortened from 10 to five calendar days. But NI 55-104 provides for a six-month transition period for the new deadline, so that it comes into effect for transactions that occur after October 31, 2010.

### **Reports only required from “Reporting Insiders”**

NI 55-104 cuts down on the number of insiders required to report, specifying only the chief executive officer, chief operating officer and chief financial officer as company officers required to report. But the list of insiders required to report trades also includes anyone who (i) has ordinary-course access to material, undisclosed information; and (ii) directly or indirectly exercises significant power or influence over the business, operations, capital or development of a company that is a reporting issuer.

### **Deemed Beneficial Ownership**

Significant shareholders are also included in the definition of reporting insiders. They are defined as persons or companies having ownership, control or direction over securities with more than 10 per cent of the voting rights of a reporting issuer. This includes any securities that may be acquired within 60 days, as a result of owning convertible securities. The rule ignores the existence of any conditions on the right to acquire securities, such as payment of an exercise price. All securities that may be acquired by the shareholder are counted for the purposes of determining the percentage ownership. This means the level of ownership calculated under this rule may be larger than the percentage ownership on a fully diluted basis.

### **Equity-based Compensation**

The new rule allows reporting issuers to report grants of stock options and other securities under a compensation arrangement — thereby exempting insiders from reporting deadlines. If a

company files such reports, its reporting insiders may rely on an exemption from the normal filing deadline for reporting grants. Instead they may file a single annual report. If these same securities are subsequently traded by reporting insiders, however, they are then required to report by the new five-day deadline. The existing exemptions for automatic securities purchase plans have been continued.

### **Derivative Transactions**

The insider reporting requirement now applies to changes in ownership or control of both (i) securities of a reporting issuer, and (ii) interests or rights associated with related financial instruments — broadly known as derivatives.

Related financial instruments include any that affect a reporting insider's economic interest in securities of a reporting issuer. This means economic arrangements that were formerly subject to disclosure under Multilateral Instrument 55-103 Insider Reporting for Certain Derivative Transactions (Equity Monetization) are now integrated into NI 55-104.

NI 55-104 also includes a supplementary insider reporting obligation. This applies to any agreement, arrangement or understanding that has the effect of altering a reporting insider's economic exposure to a reporting issuer's securities or related financial instruments. This broad definition makes it clear that reporting insiders are expected to disclose all dealings that affect their interests in the reporting issuer.

It is important to note, however, that NI 55-104 applies only to those defined as reporting insiders. It does not apply to investors who avoid acquiring ownership, control or direction of more than 10 per cent of the reporting issuer's securities.



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