

NEW CONDITIONS TO THE INSIDER REPORTING EXEMPTION FOR *ELIGIBLE INSTITUTIONAL INVESTORS* EFFECTIVE APRIL 30, 2010

Effective on April 30, 2010, the insider reporting exemption provided for “eligible institutional investors” under National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* (NI 62-103) will be amended to require additional disclosure. In order to continue to rely on the insider reporting exemption for a reporting issuer, an eligible institutional investor must ensure that its early warning or alternative monthly reports now disclose:

- its interest in any “related financial instrument” involving a security of a reporting issuer that is not otherwise reflected in its calculation of its security holdings; and
- the material terms of the related financial instrument.

Going forward, an eligible institutional investor will be required to report significant changes in its position in related financial instruments of the reporting issuer in order to maintain its eligibility for the insider reporting exemption.

The types of entities that would fall within the definition of “eligible institutional investor” contained in NI 62-103 has not changed and include financial institutions, pension funds, mutual funds that are not reporting issuers, investment managers with discretionary authority and certain investment companies and benefit plans appropriately registered under the U.S. *Securities Exchange Act of 1934*.

The term “related financial instrument” is defined very broadly in securities legislation and is intended to capture interests in a reporting issuer that affect an investor’s economic interest in securities of the reporting issuer or economic exposure to the reporting issuer but are not within the definition of a security. Accordingly, this term encompasses interests that an investor may hold in derivatives or other rights that are related to the securities or financial performance of a reporting issuer. While an eligible institutional investor is currently required to reflect convertible securities and other



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rights that may allow it to acquire securities within 60 days in the security holdings reported under the early warning requirements or the alternative monthly reporting requirements, this new required disclosure is potentially much broader.

The obligation to report significant changes in a related financial instrument position will require eligible institutional investors to monitor these changes separately from changes in their holdings in securities of a reporting issuer. A significant change in related financial instrument position is defined as any change in the interest in, or rights or obligations associated with, the related financial instrument if the change has a similar economic effect as a 2.5% or greater increase or decrease in the investor's security holdings in a class of voting or equity securities of the reporting issuer. The reporting of changes in related financial instruments is in addition to the existing disclosure required for changes in an investor's holdings in securities of the reporting issuer under the early warning requirements or the alternative monthly reporting requirements.

As a result of these new conditions, an eligible institutional investor that relies on the insider reporting exemption and that files reports under the early warning requirements of Canadian securities legislation will be required to promptly disclose the following:

- any increase of 2% or more in the investor's holdings of a class of voting equity securities from the level disclosed in its current early warning report;
- any decreases of 2% or more in the investor's holdings of a class of voting equity securities from the level disclosed in its current early warning report;
- any increase or decrease of 2.5% or more in its position in related financial instruments of the reporting issuer; and
- any change in a material fact disclosed in its current early warning report.

An eligible institutional investor that relies on the insider reporting exemption and files under the alternative monthly reporting system provided for in NI 62-103 must now report within 10 days of the end of the month if:

- the investor's net holdings of a class of voting or equity securities, as of the end of the month, increased or decreased past a fixed threshold of the total outstanding securities of the class starting at 10% and increasing in 2.5% increments (i.e., 10%, 12.5%, 15%, 17.5%, ...);

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- there were any increases or decreases of 2.5% or more in the investor's position in related financial instruments of a reporting issuer that occurred during the month; and
- there was any change in a material fact disclosed in its current alternative monthly report that occurred during the month.

The full text of the consequential amendments to NI 62-103 are included with the final version of National Instrument 55-104 Insider Reporting Requirements and Exemptions that also becomes effective on April 30, 2010 and is [available here](#).

For more information about the changes to Canada's insider reporting regime brought about by NI 55-104, please [click here](#) for our January, 2010 Securities & Capital Markets Bulletin *Changes to Insider Reporting: 5 Day Filing, Deemed Beneficial Ownership and Reporting for Derivatives* or [click here](#) to access a recording of our recent client seminar on the changes.

If you would like more information about NI 55-104 or NI 62-103 and your obligations thereunder, please contact the author of this Alert or your usual contact in **BLG's Investment Management Group**.

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