



Torkin|Manes BULLETIN

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FOCUS ON CORPORATE FINANCE

Securities Alert: Insider reporting rules set to change April 30, 2010



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On April 30, 2010, significant changes to the insider reporting requirements will take effect across Canada with the

implementation of National Instrument 55-104 and amendments to the *Securities Act (Ontario)*. Here are some of the highlights of the changes:

- **New concept of "Reporting Insider"**

Only those defined as "Reporting Insiders" will be required to file insider reports. The new Reporting Insider definition is focused on capturing those who, in the ordinary course, have the greatest access to material undisclosed information and who exercise the greatest influence over a reporting issuer. For example, not all officers are Reporting Insiders. Reporting Insiders include, among others, the CEO, CFO or COO of the reporting issuer or a major subsidiary, directors of the reporting issuer and of significant shareholders and major subsidiaries of the reporting issuer, persons or companies responsible for a principal business unit, division or function of a reporting issuer, significant management companies and their CEO, CFO, COO, directors and significant shareholders, and significant shareholders based upon post conversion beneficial ownership.

- **A Significant shareholder based upon post-conversion beneficial ownership**

In some cases securities that are not yet issued, but which could be purchased by the exercise of convertible securities or other rights, must be counted for purposes of determining whether there is a requirement to file an insider report. The new rules provide that a Reporting Insider includes a person or company (and every director, CEO, CFO and COO of such company) which would own, control or exercise direction over securities carrying more than ten per cent of the voting rights of the outstanding voting securities of a reporting issuer, including those securities that could be obtained within 60 days by exercising all convertible securities and other rights. For example, a person holding nine per cent of the outstanding voting shares of a reporting issuer would have to file an insider report if they were granted stock options which are exercisable at any time within 60 days to purchase an additional two per cent of the voting shares of the reporting issuer.

- **Acceleration of filing deadline**

The time period for reporting changes by Reporting Insiders will be shortened from ten days to five days for transactions occurring after October 31, 2010. The reporting deadline for Initial Insider reports will not change and will continue to be within ten days of becoming a Reporting Insider of a reporting issuer.

- **Simplified Insider Reporting of Option Grants under Stock Option Plans**

No insider reporting is required for directors and officers of reporting issuers and their subsidiaries who are Reporting Insiders in respect to grants of stock options if the stock option plan was described in an information circular, the issuer has filed an issuer grant report on SEDI, and the director or officer complies with the alternative reporting requirements which permit the filing of an annual insider report for a calendar year by March 31 of the following year. Discretionary exercises of stock options, however, would have to be reported within the usual filing deadline. Similar rules apply to automatic securities purchase plans (e.g. dividend reinvestment plans, stock appreciation rights, deferred share units, restricted share awards, etc.)

Reporting issuers are encouraged to update their disclosure policies to reflect the new rules.

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