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**Insider Reporting – What You Don't Know Can Hurt You**

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At one point or another, many insiders of reporting issuers find themselves "offside" of the reporting requirements set out in Canadian Securities Administrators National Instrument 55-104 - *Insider Reporting Requirements and Exemptions* ("NI 55-104"). This experience can be painful, as insider reporting is an individual responsibility and failure to file in accordance with NI 55-104 can attract serious penalties, including fines of $50 a day to a maximum of $1,000 a year for a single incident. This article will summarize some of the basic requirements of NI 55-104. However, details are important. If you are a reporting insider, you should consult with your corporation or your lawyer on a regular basis to ensure you are meeting all of the requirements of NI 55-104 that reflect your personal circumstances on a continuing basis.

*Who must report?* NI 55-104 focuses the insider trading reporting obligations on senior insiders of reporting issuers who have the greatest access to material undisclosed information. This group includes officers (such as the CEO, CFO and COO), directors, significant shareholders and any other persons who, in the ordinary course, have access to material undisclosed information about a reporting issuer and directly or indirectly do or have the ability to exercise significant power or influence over the business operations, capital or development of a reporting issuer.

*Who is a significant shareholder?* Significant shareholders are persons exercising direct or indirect control over 10% or more of the voting shares of a reporting issuer. A person may also be a significant shareholder based on post-conversion beneficial ownership if the person owns convertible securities that can be converted into voting shares within 60 days. This concept is intended to ensure that a person who owns convertible securities that have the right or obligation to acquire beneficial ownership of the underlying security within sixty days cannot avoid the disclosure requirements by holding a convertible security rather than the underlying security. NI 55-104 deems such a party to own the underlying security for the purpose of insider reporting obligations.

*What must be reported?* The reporting requirements encompass any change in ownership of all securities of the reporting issuer, including, among other things, acquisition, disposition, exercise or expiry of shares, options, put or call rights, forward contracts, stock compensation arrangements, derivative instruments, debt instruments or any other agreement that may affect the economic exposure of a significant shareholder to the reporting issuer. It's a very broad requirement that captures changes in status of almost any security interest you can imagine. Reporting insiders should assume all changes in the status of their securities are reportable unless specifically advised otherwise.

*What are the reporting deadlines?* A reporting insider must file an initial report within 10 days of becoming a reporting insider. Any changes after that must be filed within 5 days of the date of the change. Five days is a short time, particularly over a long weekend. Late filing penalties are normally $50 per day and there are almost no exceptions.

*Are there any exemptions?* There are a few specific exemptions to the reporting requirements. Primarily, these include exemptions for acquisitions and dispositions under automatic securities purchase plans and for certain issuer grants in respect of compensation, provided the corporation files certain reports on these transactions. In such cases, the reporting insider must file alternative reports, generally on a yearly basis.

As mentioned at the outset, insider reporting requirements are an individual responsibility. You should not assume the corporation of which you are an insider is “taking care of it.” Even where the corporation or an outside agent does file on your behalf, you should be proactive in ensuring that the appropriate filings are made in a timely fashion. Otherwise, you may find yourself dealing with penalties assessed against you personally. Your lawyer can help you understand your obligations as a reporting insider.

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