

## **REQUEST FOR COMMENT**

**Notice and Request for Comment** - Adoption of New Brunswick Implementing Instrument 62-801 adopting National Instrument 62-103 – *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*.

### **Introduction**

On 24 April 2006, the New Brunswick Securities Commission (the "Commission") approved publication for comment of Implementing Instrument 62-801 ("II 62-801"). Through II 62-801, the Commission would adopt National Instrument 62-103 – *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* consolidated to 14 September 2005.

The text of [II 62-801](#) is being published concurrently with this Notice.

The text of NI 62-103 can be obtained from the following links:

English: [NI 62-103](#)

French: [NC 62-103](#)

### **Background**

The early warning system contained in the securities legislation of most jurisdictions requires disclosure of holdings of securities that exceed certain prescribed thresholds in order to ensure that the market is advised of accumulations of significant blocks of securities that may influence control of a reporting issuer. Dissemination of this information is important because the securities acquired can be voted or sold, and the accumulation of the securities may signal that a take-over bid for the issuer is imminent. In addition, accumulations may be material information to the market even when not made to change or influence control of the issuer. Significant accumulations of securities may affect investment decisions as they may effectively reduce the public float, which limits liquidity and may increase price volatility of the stock. Market participants also may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions. The mere identity and presence of an institutional shareholder may be material to some investors.

### **Substance and Purpose**

The primary purpose of NI 62-103 is to provide exemptions from the early warning requirements, the insider reporting requirement, and related provisions to certain institutional investors that have a "passive intent" with respect to their ownership or control of securities of reporting issuers and to permit those persons to disaggregate securities that they own or control for purposes of those requirements in certain circumstances. This relief is designed to facilitate compliance by financial institutions,

pension funds, certain mutual funds, portfolio managers, portfolio clients, underwriters in the course of a distribution, and pledgees.

### **Request for Comment**

The Commission seeks comments on II 62-801 as it applies to the application of NI 62-103 in New Brunswick. Comments are not being sought on NI 62-103.

### **How to Provide your Comments**

Comments are to be provided, in writing, by no later than 7 July, 2006 to:

Secretary  
New Brunswick Securities Commission  
85 Charlotte Street, Suite 300  
Saint John, NB E2L 2J2  
Telephone : (506) 658-3060 -- Toll Free (866) 933-2222 (within NB only)  
Fax : (506) 658-3059  
E-mail : [information@nbsc-cvmnb.ca](mailto:information@nbsc-cvmnb.ca)

If you are not sending your comments by e-mail, please send a diskette containing your comments (in PDF or Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

### **Questions**

If you have any questions, please refer them to:

Kevin Hoyt  
Director, Corporate Finance & Chief Financial Officer  
New Brunswick Securities Commission  
Telephone: (506)-643-7691 -- Toll Free (Within NB only) 1-866-933-2222  
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## IMPLEMENTING INSTRUMENT 62-801

### ADOPTING NATIONAL INSTRUMENT 62-103

#### *THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES*

#### PART 1 DEFINITIONS

- 1.1 In this Rule “NI 62-103” means National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* of the Canadian Securities Administrators, consolidated to 14 September 2005.

#### PART 2 ADOPTION AS A RULE

- 2.1 NI 62-103 as amended by this Instrument is adopted as a Rule under the *Securities Act*.

#### PART 3 EFFECTIVE DATE

- 3.1 This Instrument comes into force on ■ .

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**Document N°:** 62-103

**Subject:** The Early Warning System and Related Take-Over Bid and Insider Reporting Issues

**Published Date:** ■

**Effective Date:** ■

**NATIONAL INSTRUMENT 62-103**  
***THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND***  
***INSIDER REPORTING ISSUES***  
*(Incorporating amendments up to September 14, 2005)*

<b>PART 1 DEFINITIONS AND INTERPRETATION .....</b>	<b>3</b>
1.1 Definitions .....	3
1.2 Deemed Effective Control.....	7
<b>PART 2 GENERAL RELIANCE AND REPORTING PROVISIONS .....</b>	<b>8</b>
2.1 Reliance on Reported Outstanding Shares .....	8
2.2 Copies of News Release and Report .....	8
2.3 No Duplication of News Releases or Reports.....	8
<b>PART 3 EARLY WARNING REQUIREMENTS .....</b>	<b>9</b>
3.1 Contents of News Releases and Reports .....	9
3.2 Filing Relief for Joint Actors .....	9
3.3 Exemption from Early Warning Requirements for Mutual Fund Securities.....	9
<b>PART 4 ALTERNATIVE MONTHLY REPORTING SYSTEM.....</b>	<b>10</b>
4.1 Exemption from the Early Warning Requirements.....	10
4.2 Disqualification .....	10
4.3 Reporting and Filing Requirements .....	10
4.4 Restrictions on Acquisitions .....	11
4.5 Filing Obligations under this Part.....	11
4.6 Change Reports .....	12
4.7 Contents of Reports .....	12
4.8 Exemptions .....	12
<b>PART 5 AGGREGATION RELIEF .....</b>	<b>13</b>
5.1 Separate Business Units.....	13
5.2 Securities Held by an Investment Fund.....	14
5.3 Reporting and Record Keeping.....	15
5.4 No Requirement to Satisfy Insider Reporting Requirement .....	15
<b>PART 6 ISSUER ACTIONS .....</b>	<b>16</b>
6.1 Issuer Actions.....	16

<b>PART 7 UNDERWRITING EXEMPTION.....</b>	<b>16</b>
7.1 Underwriting Exemption .....	16
<b>PART 8 RELIEF FOR PLEDGEES .....</b>	<b>17</b>
8.1 Relief for Pledges .....	17
8.2 Further Relief for de minimis Pledges .....	17
8.3 Corresponding Insider Reporting Relief. ....	18
<b>PART 9 INSIDER REPORTING EXEMPTION; EARLY WARNING DECREASE REPORTS .....</b>	<b>18</b>
9.1 Insider Reporting Exemption; Early Warning Decrease Reports .....	18
<b>PART 10 MORATORIUM RELIEF.....</b>	<b>20</b>
10.1 Moratorium Relief .....	20
<b>PART 11 EXEMPTIONS .....</b>	<b>20</b>
11.1 Exemptions.....	20
<b>PART 12 EFFECTIVE DATE .....</b>	<b>21</b>
12.1 Effective Date .....	21
<b>APPENDIX A CONTROL BLOCK DISTRIBUTION DEFINITION .....</b>	<b>22</b>
<b>APPENDIX B EARLY WARNING REQUIREMENTS .....</b>	<b>23</b>
<b>APPENDIX C MORATORIUM PROVISIONS .....</b>	<b>24</b>
<b>APPENDIX D SECURITY OWNERSHIP AND CONTROL PROVISIONS.....</b>	<b>25</b>
Error! Bookmark not defined.	
<b>APPENDIX E REQUIRED DISCLOSURE.....</b>	<b>26</b>
<b>APPENDIX F REQUIRED DISCLOSURE.....</b>	<b>28</b>
<b>APPENDIX G REQUIRED DISCLOSURE.....</b>	<b>30</b>

**NATIONAL INSTRUMENT 62-103**  
**THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND**  
**INSIDER REPORTING ISSUES**  
*(Incorporating amendments up to September 14, 2005)*

**PART 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

(1) In this Instrument

"acquisition announcement provisions" means the requirement in securities legislation for an offeror to issue a news release if, during a formal bid for voting or equity securities of a reporting issuer by an entity other than the offeror, the offeror acquires ownership of, or control over, securities of the class subject to the bid that, together with the offeror's securities of the class, constitute an amount equal to or greater than the amount specified in securities legislation;  
*(dispositions sur l'annonce d'acquisitions)*

"acting jointly or in concert" has the meaning ascribed to that phrase in securities legislation, and, when used in connection with an entity, has the meaning ascribed in securities legislation as if the term "entity" replaced the term "person or company" or similar term;  
*(agir de concert)*

"applicable definitions" means

- (a) the definitions of "take-over bid" and "offeror's securities" in the takeover provisions, and
- (b) the control block distribution definition; *(définitions applicables)*

"applicable provisions" means

- (a) the early warning requirements,
- (b) Part 4,
- (c) the moratorium provisions,
- (d) the insider reporting requirement,
- (e) the acquisition announcement provisions, and

(f) [repealed September 14, 2005]

"business unit" means a legal entity or part of a legal entity, or a combination of legal entities or parts of legal entities, that engage in a distinct business or investment activity separately from other businesses and investment activities of the relevant entities; (*unité d'exploitation*)

"class" means, in relation to a security, a class or series of a class of the security; (*catégorie*)

"control" means, for a security

- (a) when used in connection with the insider reporting requirements, the take-over bid requirements and related definitions and the early warning requirements, the power to exercise control or direction over the security, or similar term or expression used in securities legislation; and
- (b) when used in connection with the control block distribution definition, holding the security, or similar term or expression used in securities legislation; (*contrôle*)

"control block distribution definition" means the provisions of securities legislation listed in Appendix A; (*définition du placement d'un bloc de contrôle*)

"early warning requirements" means the provisions of securities legislation listed in Appendix B; (*règles du système d'alerte*)

"effective control" means, for a reporting issuer, the control in fact of the reporting issuer by an entity through the ownership of, or control over, voting securities of the reporting issuer, other than securities held by way of security only; (*contrôle effectif*)

"eligible institutional investor" means

- (a) a financial institution,
- (b) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada), a pension commission of a jurisdiction, or a similar regulatory authority,
- (c) a mutual fund that is not a reporting issuer,
- (d) an investment manager in relation to securities over which it exercises discretion to vote, acquire or dispose without the

express consent of the beneficial owner, subject to applicable legal requirements, general investment policies, guidelines, objectives or restrictions, or

- (e) an entity referred to in clauses (D) or (F) of Rule 13d-1(b)(1)(ii) under the 1934 Act;  
*(investisseur institutionnel admissible)*

"entity" means a person or company or a business unit; *(entité)*

"equity security" has the meaning ascribed to that term in securities legislation; *(titre de participation)*

"financial institution" means

- (a) a Canadian financial institution,
- (b) an entity that is engaged in financial services activities and that is supervised and regulated under the banking, insurance, trust or similar laws of, and incorporated in, the United States of America or Japan, or
- (c) a credit institution, within the meaning of European Union Directive 77/780/EEC, whose home member state for purposes of that European Union Directive is France, Germany, Italy or the United Kingdom of Great Britain and Northern Ireland; *(institution financière)*

"formal bid"

- (a) has the meaning ascribed to that term in securities legislation, and
- (b) in Quebec only, means a take-over bid or an issuer bid made in accordance with Chapter III of Title IV, or section 119, of the *Securities Act* (Quebec); *(offre formelle)*

"investment manager" means an entity that

- (a) either
  - (i) is registered or licensed to provide investment counselling, portfolio management or similar advisory services in respect of securities, or is exempt from the requirement to be so registered or licensed, under the securities laws of a jurisdiction or of Japan or under the Investment Advisers Act of 1940 of the United States of America, as amended, or
  - (ii) is subject to European Union Directive 93/22 on investment services in the securities field, and



provides the portfolio management services referred to in Section A(3) of the Annex to that Directive, and whose home member state is France, Germany, Italy or the United Kingdom of Great Britain and Northern Ireland, and

- (b) provides the services referred to in paragraph (a) for valuable consideration under a contractual arrangement; (*gestionnaire de portefeuille*)

"joint actor" means, in relation to an entity and a security, another entity acting jointly or in concert with the entity in connection with the ownership of, or control over, the security; (*allié*)

"moratorium provisions" means the provisions of securities legislation listed in Appendix C; (*dispositions d'interdiction provisoire d'opérations*)

"news release" includes a press release; (*communiqué de presse*)

"offeror"

- (a) has the meaning ascribed to that term in securities legislation, and
- (b) in Quebec only, means a person or company making a take-over bid or an issuer bid or an acquisition subject to sections 147.11, 147.12, 147.15 and 147.16 of the *Securities Act* (Quebec); (*initiateur*)

"offeror's securities"

- (a) has the meaning ascribed to that term in securities legislation, and
- (b) in Quebec only, means the securities included in the calculation of an offeror's interest under sections 111 and 112 of the *Securities Act* (Quebec); (*participation*)

"ownership" means, in relation to a security, the beneficial ownership of the security, and "owns", "owned" and similar words have corresponding meanings; (*propriété*)

"pledgee" includes a holder of any type of security interest; (*créancier nanti*)

"portfolio adviser" means an entity that provides investment advice or portfolio management services to, or for, an investment fund; (*conseiller en valeurs*)

"private mutual fund"

- (a) has the meaning ascribed to that term in securities legislation, and
- (b) in Quebec only, means a mutual fund that is
  - (i) operated as an investment club where the conditions in subsection 3(12) of the *Securities Act* (Quebec) are met; or
  - (ii) referred to in subsection 3(11) of the *Securities Act* (Quebec); (*organisme de placement collectif fermé*)

"securityholding percentage" means, in relation to an entity and a class of securities, the percentage of the outstanding securities of the class owned, together with the percentage controlled by the entity, determined in accordance with the provisions of applicable securities legislation listed in Appendix D and after application of any aggregation relief available under Part 5 that is relied on by the entity; (*pourcentage de participation*)

"take-over provisions" means the provisions in securities legislation that regulate take-over bids and issuer bids; and (*dispositions sur les offres publiques*)

"underwriting period" means, for an entity acting as an underwriter of securities, the period commencing from the date of execution of an underwriting agreement or commitment until

- (a) for securities acquired by the entity upon the exercise of an overallotment option, four business days after the acquisition of those securities, and
- (b) for all other securities, the earlier of
  - (i) the expiration of 40 days after the date of the closing of the purchase of the securities, and
  - (ii) the date of the completion of the distribution by the underwriter of the securities. (*durée de la prise ferme*)

**1.2 Deemed Effective Control** - For the purposes of the definition of "effective control", an entity that, either alone or together with one or more joint actors, owns or controls voting securities carrying more than 30 percent of

the votes attached to all of the outstanding voting securities of a reporting issuer shall, in the absence of evidence to the contrary, be deemed to possess effective control over the reporting issuer.

## **PART 2 GENERAL RELIANCE AND REPORTING PROVISIONS**

### **2.1 Reliance on Reported Outstanding Shares**

- (1) Subject to subsection (2), in determining its securityholding percentage in a class of securities for the purposes of the early warning requirements or Part 4, an entity may rely upon information most recently provided by the issuer of the securities in a material change report or under section 2.1 of National Instrument 62-102 *Disclosure of Outstanding Share Data* or section 5.4 of National Instrument 51-102 *Continuous Disclosure Obligations*, whichever contains the most recent relevant information.
- (2) Subsection (1) does not apply if the entity has knowledge both
  - (a) that the information filed is inaccurate or has changed; and
  - (b) of the correct information.

**2.2 Copies of News Release and Report** - An entity that files a news release and report under the early warning requirements, or a report under Part 4, in relation to a reporting issuer shall immediately send a copy of each filing to the reporting issuer.

### **2.3 No Duplication of News Releases or Reports**

- (1) An entity that is required to issue a news release under both the early warning requirements and the acquisition announcement provisions is exempt from the requirement to issue the news release contained in the provision requiring the later release if
  - (a) the news release is filed under the provision with the earlier reporting requirement; and
  - (b) the facts required to be contained in the two news releases are identical.
- (2) An entity that is required to file a report under the acquisition announcement provisions and either the early warning requirements or Part 4 is exempt from the requirement to file the report under the provision requiring the later report if
  - (a) the report is filed under the provision requiring the earlier report; and

- (b) the facts required to be contained in the two reports are identical.

## **PART 3 EARLY WARNING REQUIREMENTS**

### **3.1 Contents of News Releases and Reports**

- (1) A news release required under the early warning requirements shall contain the information required by Appendix E.
- (2) Despite subsection (1), a news release required under the early warning requirements may omit the information otherwise required by paragraphs 1(d), (g), (h) and (i) of Appendix E, and paragraph 1(j) of Appendix E to the extent that the information relates to paragraphs 1(d), (g), (h) and (i), if
  - (a) the omitted information is included in the corresponding report required by securities legislation; and
  - (b) the news release indicates the name and telephone number of an individual to contact in order to obtain a copy of the report.
- (3) The offeror shall send a copy of the report referred to in paragraph (2)(a) promptly to any entity requesting it.

### **3.2 Filing Relief for Joint Actors** - The early warning requirements and the acquisition announcement provisions do not apply to a joint actor of an offeror in connection with the obligation to make a specific filing of a news release or report if

- (a) the offeror files a news release or report at the time that the joint actor would be required to file; and
- (b) the news release or report filed discloses the information concerning the joint actor required by securities legislation.

### **3.3 Exemption from Early Warning Requirements for Mutual Fund Securities** – The early warning requirements do not apply in connection with the ownership or control of securities issued by a mutual fund to which National Instrument 81-102 Mutual Funds applies.

## **PART 4 ALTERNATIVE MONTHLY REPORTING SYSTEM**

**4.1 Exemption from the Early Warning Requirements** - The early warning requirements do not apply to an eligible institutional investor for a reporting issuer if the eligible institutional investor

- (a) is not disqualified by section 4.2 from filing reports under this Part for the reporting issuer; and
- (b) either
  - (i) intends to file reports under this Part for the reporting issuer, if no reports are yet required to be filed; or
  - (ii) is not in arrears of filing reports under this Part for the reporting issuer, if a report has been required by this Part to be filed.

**4.2 Disqualification** - An eligible institutional investor shall not file reports under this Part for a reporting issuer if the eligible institutional investor, or a joint actor

- (a) makes or intends to make a formal bid for securities of the reporting issuer; or
- (b) proposes or intends to propose a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer that if completed would reasonably be expected to result in the eligible institutional investor, either alone or together with any joint actors, possessing effective control over the reporting issuer or a successor to all or a part of the business of the reporting issuer.

### **4.3 Reporting and Filing Requirements**

- (1) If an eligible institutional investor is relying on the exemption in section 4.1 for a reporting issuer and becomes disqualified under section 4.2 from filing, or no longer intends to file, reports under this Part for the reporting issuer, the eligible institutional investor shall
  - (a) immediately issue and file a news release; and
  - (b) within two business days after filing the news release, file a report.
- (2) The news release and report required by subsection (1) shall contain the information required by Appendix F.

- (3) An eligible institutional investor that is required to file a report under subsection (1) for a reporting issuer is not exempt from the early warning requirements for that reporting issuer as of the date on which the news release required by subsection (1) is required to be filed.
- (4) An eligible institutional investor that files reports under this Part for a reporting issuer and that controls securities of the reporting issuer that are owned by another entity shall
  - (a) on request by the entity, promptly advise the entity of the number of securities held on its behalf; and
  - (b) if the eligible institutional investor has reason to believe that the securityholding percentage of the entity in a class of voting or equity securities of the reporting issuer equals 10 percent or more, promptly advise the entity of the number of securities held on its behalf.

**4.4 Restrictions on Acquisitions** - An eligible institutional investor that has become disqualified under section 4.2 from filing reports under this Part for a reporting issuer, if the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer is 10 percent or more, shall not acquire ownership of, or control over, any additional securities of the reporting issuer for the period

- (a) starting at the time that the news release referred to in paragraph 4.3(1)(a) is required to be filed; and
- (b) ending 10 days after the news release is filed.

**4.5 Filing Obligations under this Part** - In order to rely on the exemption provided by section 4.1, an eligible institutional investor shall file a report

- (a) within 10 days after the end of the month in which the eligible institutional investor elected to begin to file reports for the reporting issuer under this Part, if the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer at the end of the month is 10 percent or more;
- (b) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer, as at the end of the month, increased to 10 percent or more;
- (c) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a

class of voting or equity securities of the reporting issuer, as at the end of the month, increased or decreased past thresholds that are products of whole numbers multiplied by 2.5 percent of the outstanding securities of the class and that are in excess of 10 percent of the outstanding securities of the class; and

- (d) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer, as at the end of the month, decreased to less than 10 percent.

**4.6 Change Reports** - In addition to the filing requirements of section 4.5, an eligible institutional investor shall file a report within 10 days after the end of the month in which there has been a change in a material fact contained in the report of the eligible institutional investor most recently filed under this Part.

**4.7 Contents of Reports**

- (1) A report filed under this Part shall contain the information required by Appendix G.
- (2) Despite subsection (1), a report filed under paragraph 4.5(d) may be limited to
  - (a) the name and address of the eligible institutional investor;
  - (b) the name of the reporting issuer and the designation and number or principal amount of voting or equity securities of the reporting issuer in respect of which the report is being filed and the securityholding percentage of the eligible institutional investor in the class of securities; and
  - (c) a statement that the eligible institutional investor is eligible to file reports under this Part.

**4.8 Exemptions** - The requirement to file a report under this Part does not apply to a joint actor with an eligible institutional investor in connection with a specific filing if

- (a) the eligible institutional investor files a report under this Part at the time that the joint actor is required to file; and
- (b) the report discloses the information concerning the joint actor required by this Instrument.

## PART 5 AGGREGATION RELIEF

**5.1 Separate Business Units** - An eligible institutional investor, or an affiliate or associate of an eligible institutional investor, that conducts business or investment activities through business units may, for the purposes of the applicable provisions and securities legislation related to the applicable definitions, treat securities that are owned or controlled through a business unit, or securities into which those securities are convertible, exercisable or exchangeable, separately from securities owned or controlled through any other of its business units if

- (a) decisions on each of the acquisition, disposition, holding or voting of the securities owned or controlled by a business unit are made in all circumstances by that business unit;
- (b) the business unit is not a joint actor with any other business unit with respect to the securities, determined without regard to the presumption in securities legislation that an associate or affiliate of an offeror is presumed to be acting jointly or in concert with the offeror;
- (c) no entity that makes, advises on, participates in the formulation of, or exercises influence over, decisions on the acquisition, disposition, holding or voting of securities owned or controlled by or on behalf of a business unit also makes, advises on, participates in the formulation of or exercises influence over, decisions on the acquisition, disposition, holding or voting of securities owned or controlled by or on behalf of any other business unit, except for the purposes of
  - (i) preparing research reports,
  - (ii) monitoring or ensuring compliance with regulatory requirements, or
  - (iii) setting, monitoring or ensuring compliance with general investment policies, guidelines, objectives or restrictions;
- (d) the eligible institutional investor or affiliate or associate has reasonable grounds for believing that each business unit complies with the applicable provisions and securities legislation related to the applicable definitions in connection with the securities owned or controlled by the business unit;
- (e) the eligible institutional investor or affiliate or associate has taken reasonable steps to ensure that each business unit complies with the requirements of this Part; and



- (f) the eligible institutional investor or affiliate or associate complies with section 5.3.

**5.2 Securities Held by an Investment Fund** - An eligible institutional investor, or an affiliate or associate of an eligible institutional investor, may, for the purposes of the applicable provisions and securities legislation related to the applicable definitions, treat securities owned or controlled by an investment fund over which the eligible institutional investor, affiliate or associate exercises or shares control, or securities into which those securities are convertible, exercisable or exchangeable, separately from other securities owned or controlled by the eligible institutional investor or affiliate or associate if

- (a) the investment fund is not a private mutual fund;
- (b) a portfolio adviser manages the investment fund on behalf of the eligible institutional investor under a written agreement;
- (c) the portfolio adviser has been identified as managing the investment fund in a document provided to an investor;
- (d) none of the eligible institutional investor, its affiliates or associates, or a director, officer, partner, employee or agent of the eligible institutional investor or its affiliates or associates, makes, advises on, participates in the formulation of, or exercises influence over, decisions made by the portfolio adviser on the acquisition, disposition, holding or voting of securities, except for the purposes of
  - (i) preparing research reports, (ii) monitoring or ensuring compliance with regulatory requirements, or
  - (iii) setting, monitoring or ensuring compliance with general investment policies, guidelines, objectives or restrictions;
- (e) the eligible institutional investor or affiliate or associate has reasonable grounds for believing that the portfolio adviser complies with the applicable provisions and securities legislation related to the applicable definitions in connection with securities owned or controlled by the investment fund;
- (f) the portfolio adviser neither controls nor is controlled by the eligible institutional investor or an affiliate or associate of the eligible institutional investor; and
- (g) the eligible institutional investor or affiliate or associate complies with section 5.3.

### 5.3 Reporting and Record Keeping

- (1) In addition to the requirements of sections 5.1 and 5.2, in order to rely on section 5.1 or 5.2, an eligible institutional investor or an affiliate or associate shall indicate in any document released or filed under the applicable provisions or securities legislation related to the applicable definitions
  - (a) its reliance on either section 5.1 or 5.2;
  - (b) the identity of the business units or investment funds for which ownership and control of the securities has been disclosed; and
  - (c) the fact that securities owned or controlled by other business units or investment funds have not been, or may not have been, disclosed.
- (2) An eligible institutional investor or affiliate or associate shall maintain records of the details concerning
  - (a) business units of the entity that are treated separately, by reason of section 5.1, for the purposes of compliance with the applicable provisions and securities legislation related to the applicable definitions; and
  - (b) investment funds whose ownership of, or control over, securities are treated separately, by reason of section 5.2, for the purposes of compliance with the applicable provisions and securities legislation related to the applicable definitions.

**5.4 No Requirement to Satisfy Insider Reporting Requirement** - If an eligible institutional investor, or an affiliate or associate of an eligible institutional investor, is relying on this Part so that it is not subject to the insider reporting requirement for a reporting issuer, then every director or senior officer of the eligible institutional investor, or of the affiliate or associate of an eligible institutional investor, who is an insider of the reporting issuer solely as a result of being a director or senior officer of the eligible institutional investor, or the affiliate or associate of an eligible institutional investor, is not subject to the insider reporting requirement for the reporting issuer.

## **PART 6 ISSUER ACTIONS**

### **6.1 Issuer Actions**

- (1) An entity is exempt from the early warning requirements and the obligation to report under Part 4 in connection with an increase in the securityholding percentage of the entity in a class of securities of a reporting issuer that arises without any action being taken by the entity and solely from a reduction in outstanding securities that occurs as a result of redemptions, retractions or other repurchases by the reporting issuer, that affect or are offered to all security holders of the relevant class. (repealed and replaced as of September 14, 2005)
- (2) An entity is exempt from the early warning requirements and the obligation to report under Part 4 in connection with a decrease in the securityholding percentage of the entity in a class of securities of a reporting issuer that arises without any action being taken by the entity and solely from an increase in outstanding securities that occurs as a result of treasury issuances of securities by the reporting issuer.
- (3) An entity may rely upon an exemption provided by this section in connection with a class of securities only until the entity undertakes any transaction that changes the securityholding percentage of the entity in that class of securities.
- (4) An entity that undertakes a transaction described in subsection (3) shall comply with the early warning requirements or Part 4 in connection with the class of securities referred to in that subsection in a manner that reflects the changes in the securityholding percentage of the entity in that class of securities since the last news release or report made or filed under the early warning requirements or Part 4.

## **PART 7 UNDERWRITING EXEMPTION**

**7.1 Underwriting Exemption** - An entity is exempt from the early warning requirements and the obligation to report under Part 4 in respect of securities owned by the entity in its capacity as underwriter or securities into which those securities are convertible, or exercisable or exchangeable, during the underwriting period, if

- (a) the entity is engaged in the business of an underwriter of securities; and

- (b) the entity or the issuer of the securities has issued and filed a news release that
  - (i) announces the proposed underwriting, and
  - (ii) identifies the reporting issuer and the designation and number or principal amount of the securities underwritten.

## **PART 8 RELIEF FOR PLEDGEEES**

### **8.1 Relief for Pledges**

- (1) For securities that are controlled by a person or company as a pledgee, and any securities into which those securities are convertible, exercisable or exchangeable, in either case that are pledged, mortgaged or otherwise encumbered as collateral for a debt under a written pledge agreement and in the ordinary course of the business of the person or company, the person or company is exempt from the applicable provisions, and those securities are not required to be taken into account for the purposes of securities legislation related to the applicable definitions.
- (2) Subsection (1) does not apply at any time that the person or company is legally entitled to dispose of the securities as pledgee for the purpose of applying proceeds of realization in repayment of the secured debt.

### **8.2 Further Relief for de minimis Pledges**

- (1) Despite subsection 8.1(2), for securities that are controlled by a person or company as a pledgee, and any securities into which those securities are convertible, exercisable or exchangeable, in either case that are or were pledged, mortgaged or otherwise encumbered as collateral for a debt, under a written pledge agreement and in the ordinary course of the business of the person or company, the person or company is exempt from the applicable provisions, and those securities are not required to be taken into account for the purposes of securities legislation related to the applicable definitions, even if the person or company is legally entitled to dispose of the securities as pledgee for the purpose of applying proceeds of realization in repayment of the secured debt, if
  - (a) the principal amount of the debt, together with the principal amount of all other debts of or guaranteed by the same borrower to the person or company, does not exceed \$2,000,000; and

- (b) the pledged securities, and securities into which the pledged securities are convertible, exercisable or exchangeable, constitute less than 10 percent of a class of voting or equity securities.

**8.3 Corresponding Insider Reporting Relief** - If a person or company is exempt under section 8.1 or 8.2 from the insider reporting requirement for those securities of a reporting issuer that it controls as pledgee, every director or senior officer of the person or company who is an insider of the reporting issuer solely as a result of being a director or senior officer of the person or company that is an insider of the reporting issuer is exempt from the insider reporting requirement for those securities.

## **PART 9 INSIDER REPORTING EXEMPTION; EARLY WARNING DECREASE REPORTS**

### **9.1 Insider Reporting Exemption; Early Warning Decrease Reports**

- (1) Subject to subsections (3) and (4), an eligible institutional investor is exempt from the insider reporting requirement for a reporting issuer if
  - (a) the eligible institutional investor has filed the report required under the early warning requirements or Part 4 for the reporting issuer in connection with the current securityholding percentage of the eligible institutional investor in the classes of voting and equity securities of the reporting issuer;
  - (b) the eligible institutional investor is not disqualified under section 4.2 from filing reports under Part 4;
  - (c) the eligible institutional investor does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed;
  - (d) the eligible institutional investor does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed;
  - (e) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor; and

- (f) the eligible institutional investor, either alone or together with any joint actors, does not possess effective control of the reporting issuer.
- (2) An eligible institutional investor relying on the exemption in subsection (1) shall maintain records that include the information that, absent this section, would have been required to be included in a report filed under the insider reporting requirement.
  - (3) Despite subsection (1), an eligible institutional investor that is filing reports under the early warning requirements for a reporting issuer, and whose securityholding percentage in a class of voting or equity securities of the reporting issuer decreases by two percent or more, may rely upon the exemption contained in subsection (1) for the reporting issuer only if
    - (a) the eligible institutional investor treats the decrease as a change in a material fact for the purposes of securities legislation pertaining to the early warning requirements; or
    - (b) the decrease arose without any action being taken by the eligible institutional investor and solely from an increase in outstanding securities that occurred as a result of treasury issuances of securities by the reporting issuer, and the eligible institutional investor has not undertaken any transaction in respect of the class of securities since the decrease.
  - (4) Despite subsection (1), an eligible institutional investor that is an insider of a reporting issuer may not rely upon the exemption contained in subsection (1) if
    - (a) the eligible institutional investor, either alone or with a joint actor or joint actors, purchased in the previous month, directly or indirectly, 50 percent or more of all of the securities of a class that were reported sold on stock exchanges, over-the-counter markets or both in the previous month; or
    - (b) the eligible institutional investor, either alone or with a joint actor or joint actors, sold in the previous month, directly or indirectly, 50 percent or more of all of the securities of a class that were reported sold on stock exchanges, over-the-counter markets or both in the previous month.
  - (5) If an eligible institutional investor is exempt under subsection (1) from the insider reporting requirement for a reporting issuer, every director or senior officer of the eligible institutional investor who is

an insider of the reporting issuer solely as a result of being director or senior officer of the eligible institutional investor is exempt from the insider reporting requirement for the reporting issuer.

## **PART 10 MORATORIUM RELIEF**

### **10.1 Moratorium Relief**

- (1) An entity is exempt from the moratorium provisions in respect of the acquisition of, or offers to acquire, securities, if those acquisitions or offers are made by an investment manager acting on behalf of the entity without the direction or prior knowledge of the entity.
- (2) Subsection (1) does not apply to an investment manager acting as principal.
- (3) An entity is exempt from the moratorium provisions in respect of any acquisitions of, or offers to acquire, securities made solely in its capacity as an approved specialist, or market maker, recognized by a stock exchange or an over-the-counter market that represents a published market for the securities.
- (4) An eligible institutional investor is exempt from the moratorium provisions in respect of securities of a reporting issuer at any time in which
  - (a) the eligible institutional investor is using the exemption in section 4.1 in connection with filings relating to securities of that reporting issuer; or
  - (b) the eligible institutional investor is subject to the restrictions contained in section 4.4.

## **PART 11 EXEMPTIONS**

### **11.1 Exemptions**

- (1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, 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.

**PART 12 EFFECTIVE DATE**

**12.1 Effective Date** - This Instrument comes into force on March 15, 2000.



**APPENDIX A  
CONTROL BLOCK DISTRIBUTION DEFINITION**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
ALBERTA	Clause 1(p)(iii) of the Securities Act (Alberta) (as amended September 14, 2005)
BRITISH COLUMBIA	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the Securities Act (British Columbia)
MANITOBA	Paragraph 1(b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the Securities Act (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the Securities Act (New Brunswick) (as amended September 14, 2005)
NEWFOUNDLAND	Clause 2(1)(l)(iii) of the Securities Act (Newfoundland)
NOVA SCOTIA	Clause 2(1)(l)(iii) of the Securities Act (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the Securities Act (Ontario)
QUEBEC	Subparagraph 9 of the definition of "distribution" provided for in section 5 of the Securities Act (as amended September 14, 2005)
PRINCE EDWARD ISLAND	Clause 1(b.1)(iii) of the Securities Act (Prince Edward Island)
SASKATCHEWAN	Subclause 2(1)(r)(iii) of The Securities Act, 1988 (Saskatchewan)

**APPENDIX B  
EARLY WARNING REQUIREMENTS**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
ALBERTA	Subsections 176(1), 176(2), and 176(3) of the Securities Act (Alberta) (as amended September 14, 2005)
BRITISH COLUMBIA	Subsections 111(1) and 111(2) of the Securities Act (British Columbia)
MANITOBA	Subsections 92(1) and 92(2) of the Securities Act (Manitoba)
NEW BRUNSWICK	Subsections 126(1) and (2) of the Securities Act (New Brunswick) (as amended September 14, 2005)
NEWFOUNDLAND	Subsections 102(1) and 102(2) of the Securities Act (Newfoundland)
NOVA SCOTIA	Subsections 107(1) and 107(2) of the Securities Act (Nova Scotia)
ONTARIO	Subsections 101(1) and 101(2) of the Securities Act (Ontario)
QUEBEC	Sections 147.11 and 147.12 of the Securities Act (Quebec)
SASKATCHEWAN	Subsections 110(1) and 110(2) of The Securities Act, 1988 (Saskatchewan)

**APPENDIX C  
MORATORIUM PROVISIONS**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
ALBERTA (Alberta)	Subsection 141(4) of the Securities Act
BRITISH COLUMBIA	Subsection 111(3) of the Securities Act (British Columbia)
MANITOBA (Manitoba)	Subsection 92(3) of the Securities Act
NEWFOUNDLAND	Subsection 102(3) of the Securities Act (Newfoundland)
NOVA SCOTIA	Subsection 107(3) of the Securities Act (Nova Scotia)
ONTARIO (Ontario)	Subsection 101(3) of the Securities Act
QUEBEC	Section 147.14 of the Securities Act (Quebec)
SASKATCHEWAN	Subsection 110(3) of The Securities Act, 1988 (Saskatchewan)

**APPENDIX D  
SECURITY OWNERSHIP AND CONTROL PROVISIONS**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
ALBERTA	Sections 5 and 6, subsections 131(4), 131(5) and 131(6), and section 131.1 of the Securities Act (Alberta)
BRITISH COLUMBIA	Subsection 1(4) and sections 95 and 96 of the Securities Act (British Columbia)
MANITOBA	Subsections 1(6) and 1(7) and sections 81 and 82 of the Securities Act (Manitoba)
NEWFOUNDLAND	Subsections 2(5) and 2(6) and sections 91 and 92 of the Securities Act (Newfoundland)
NOVA SCOTIA	Subsections 2(5) and 2(6) and sections 96 and 97 of the Securities Act (Nova Scotia)
ONTARIO	Subsections 1(5) and 1(6) and sections 90 and 91 of the Securities Act (Ontario)
QUEBEC (Quebec)	Sections 111 and 112 of the Securities Act
SASKATCHEWAN	Subsections 2(5) and 2(6) and sections 99 and 100 of The Securities Act, 1988 (Saskatchewan)

**APPENDIX E**  
**REQUIRED DISCLOSURE**

**REQUIRED DISCLOSURE IN NEWS RELEASE FILED UNDER EARLY WARNING REQUIREMENTS**

1. For each class of securities involved in a transaction or occurrence giving rise to an obligation to file a news release under the early warning requirements and, if applicable, for each class of voting or equity securities into which the securities of the class are convertible, exercisable or exchangeable, the news release shall include:
  - (a) the name and address of the offeror;
  - (b) the designation and number or principal amount of securities and the offeror's securityholding percentage in the class of securities of which the offeror acquired ownership or control in the transaction or occurrence giving rise to the obligation to file the news release, and whether it was ownership or control that was acquired in those circumstances;
  - (c) the designation and number or principal amount of securities and the offeror's securityholding percentage in the class of securities immediately after the transaction or occurrence giving rise to obligation to file the news release;
  - (d) the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities referred to in paragraph (c) over which
    - (i) the offeror, either alone or together with any joint actors, has ownership and control,
    - (ii) the offeror, either alone or together with any joint actors, has ownership but control is held by other persons or companies other than the offeror or any joint actor, and
    - (iii) the offeror, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;
  - (e) the name of the market in which the transaction or occurrence that gave rise to the news release took place;
  - (f) the purpose of the offeror and any joint actors in effecting the transaction or occurrence that gave rise to the news release, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer;

- (g) the general nature and the material terms of any agreement, other than lending arrangements, with respect to securities of the reporting issuer entered into by the offeror, or any joint actor, and the issuer of the securities or any other entity in connection with the transaction or occurrence giving rise to the news release, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;
  - (h) the names of any joint actors in connection with the disclosure required by this Appendix;
  - (i) in the case of a transaction or occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, the nature and value of the consideration paid by the offeror; and
  - (j) if applicable, a description of any change in any material fact set out in a previous report by the entity under the early warning requirements or Part 4 in respect of the reporting issuer's securities.
2. Despite paragraph (1)(b), an offeror may omit the securityholding percentage from a news release if it is included in the corresponding report filed under the early warning requirements and the change in percentage would represent less than 1 percent of the class.
3. A news release may also include
- (a) information in addition to that required by this Instrument; and
  - (b) a declaration that the issuance of the news release is not an admission that an entity named in the news release owns or controls any described securities or is a joint actor with another named entity.

**APPENDIX F  
REQUIRED DISCLOSURE**

**REQUIRED DISCLOSURE IN NEWS RELEASE AND REPORT FILED BY AN ELIGIBLE INSTITUTIONAL INVESTOR UNDER SECTION 4.3**

1. For each class of securities involved in an occurrence giving rise to an obligation to file a news release under section 4.3 and, if applicable, for each class of voting or equity securities into which the securities of the class are convertible, exercisable or exchangeable, the news release shall include:
  - (a) a statement that the eligible institutional investor is ceasing to file reports under Part 4 for the reporting issuer;
  - (b) the reasons for doing so;
  - (c) the name and address of the eligible institutional investor;
  - (d) the designation and number or principal amount of securities and the eligible institutional investor's securityholding percentage in the class of securities immediately after the occurrence giving rise to obligation to file the news release;
  - (e) the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities referred to in paragraph (d) over which
    - (i) the eligible institutional investor, either alone or together with any joint actors, has ownership and control,
    - (ii) the eligible institutional investor, either alone or together with any joint actors, has ownership but control is held by other persons or companies other than the eligible institutional investor or any joint actor, and
    - (iii) the eligible institutional investor, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;
  - (f) the purpose of the eligible institutional investor and any joint actors in effecting the occurrence that gave rise to the news release, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer;
  - (g) the general nature and the material terms of any agreement, other than lending arrangements, with respect to securities of the reporting issuer entered into by the eligible institutional investor, or

any joint actor, and the issuer of the securities or any other entity in connection with the occurrence giving rise to the news release, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;

- (h) the names of any joint actors in connection with the disclosure required by this Appendix;
- (i) in the case of an occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, the nature and value of the consideration paid by the eligible institutional investor; and
- (j) if applicable, a description of any change in any material fact set out in a previous report by the eligible institutional investor under the early warning requirements or Part 4 in respect of the reporting issuer's securities.

2. A news release may also include

- (a) information in addition to that required by this Instrument; and
- (b) a declaration that the issuance of the news release is not an admission that an entity named in the news release owns or controls any described securities or is a joint actor with another named entity.



**APPENDIX G  
REQUIRED DISCLOSURE**

**REQUIRED DISCLOSURE IN REPORT FILED BY AN ELIGIBLE INSTITUTIONAL INVESTOR UNDER PART 4**

1. For each class of securities required to be reported upon under Part 4, a report shall include:
  - (a) the name and address of the eligible institutional investor;
  - (b) the net increase or decrease in the number or principal amount of securities, and in the eligible institutional investor's securityholding percentage in the class of securities, since the last report filed by the eligible institutional investor under Part 4 or the early warning requirements;
  - (c) the designation and number or principal amount of securities and the eligible institutional investor's securityholding percentage in the class of securities at the end of the month for which the report is made;
  - (d) the designation and number or principal amount of securities and the percentage of outstanding securities referred to in paragraph (c) over which
    - (i) the eligible institutional investor, either alone or together with any joint actors, has ownership and control,
    - (ii) the eligible institutional investor, either alone or together with any joint actors, has ownership but control is held by other entities other than the eligible institutional investor or any joint actor, and
    - (iii) the eligible institutional investor, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;
  - (e) the purpose of the eligible institutional investor and any joint actors in acquiring or disposing of ownership of, or control over, the securities, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer;
  - (f) the general nature and the material terms of any agreement, other than lending arrangements, with respect to securities of the reporting issuer entered into by the eligible institutional investor, or any joint actor, and the issuer of the securities or any other entity in connection with any transaction or occurrence resulting in the

change in ownership or control giving rise to the report, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;

- (g) the names of any joint actors in connection with the disclosure required by this Appendix;
  - (h) if applicable, a description of any change in any material fact set out in a previous report by the eligible institutional investor under the early warning requirements or Part 4 in respect of the reporting issuer's securities; and
  - (i) a statement that the eligible institutional investor is eligible to file reports under Part 4 in respect of the reporting issuer.
2. Despite paragraph (1)(b), an eligible institutional investor may omit the securityholding percentage from a report if the change in percentage is less than 1 percent of the class.
3. A report may also include
- (a) information in addition to that required by this Instrument; and
  - (b) a declaration that the filing of the report is not an admission that an entity named in the report owns or controls any described securities or is a joint actor with another named entity.