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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

Re: CSA Notice of March 13, 2013 re Proposed Amendments to NI 62-104 ("NI 62-104"), *Take-over Bids and Issuer Bids*, NP 62-203 ("NP 62-203"), *Take-over Bids and Issuer Bids and NI 62-103 Early Warning Systems and Related Take-over Bid and Insider Reporting Issues* ("NI 62-103") ("Notice")

Thank you for inviting comment on the Notice. Our comments in this letter are confined to some of the questions in the Notice that concern the early warning reporting ("EWR") rules.

We observe that changes in reporting thresholds and other early warning reporting requirements may promote transparency but may also negatively affect the willingness of some parties to pursue investment programs in Canada to the possible detriment of Canadian reporting issuers. An appropriate balance must be struck between the interests of the different constituencies affected by the early warning regime.

If the CSA decides to proceed with these changes, transitional guidance is needed to confirm that parties having holdings above the threshold need not report until they have acquired additional securities. Further, the transitional rules should allow persons who wish to sell down below the 5% level to do so without having to report.

1. *Do you agree with our proposal to maintain the requirement for further reporting at 2% or should we require further reporting at 1%? Please explain why or why not.*

   We think the lowering of the initial reporting threshold does not necessarily require a commensurate lowering in the threshold for reporting of changes.

2. *A person cannot acquire further securities for a period beginning at the date of acquisition until one business day after the filing of the report. This trading moratorium is not applicable to acquisitions that result in the person acquiring beneficial ownership of, or control or direction over, 20% or more of the voting or equity securities on the basis that the take-over bid provisions are applicable at the 20% level. The proposed decrease to the early warning reporting threshold would result in the moratorium applying at the 5% ownership threshold. We believe that the purpose of the moratorium is still valid at the 5% level because the market should be alerted of the acquisition before the acquiror is permitted to make additional purchases.*

   (a) *Do you agree with our proposal to apply the moratorium provisions at the 5% level or do you believe that the moratorium should not be applicable between the 5% and 10% ownership levels? Please explain your views.*

   If an initial reporting threshold is adopted at the 5% level, that result is likely to be controversial for some investors. A way of softening the impact of the lower threshold would be to suspend the moratorium for further accumulations up to 10%.

   (b) *The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.*

   As long as the community is comfortable that the equity equivalent definition captures instruments that are substantially equivalent in economic terms to conventional equity holdings, the approach in the Notice seems logical.

   (c) *Do you think that a moratorium is effective? Is the exception at the 20% threshold justified? Please explain why or why not.*

   A moratorium is effective as a means of creating a strong incentive to report so that an accumulation program can resume. Whether the "stop and report" approach yields significant benefits to the capital markets is much less clear.

3. *We currently recognize that accelerated reporting is necessary if securities are acquired during a take-over bid by requiring a news release at the 5% threshold to be filed before the opening of trading on the next business day.*

   With the Proposed Amendments to the early warning reporting threshold, we do not propose to further accelerate early warning reporting during a take-over bid.

   (a) *Do you agree? Please explain why or why not.*

   We agree. The existing reporting requirement is sufficiently accelerated.

   (b) *If you disagree, how should we accelerate reporting of transactions during a take-over bid? Should we decrease the threshold for reporting changes from 2% to 1%? Or do you think that requiring early warning reporting at the 3% level is a more appropriate manner to accelerate disclosure? Please explain your views.*

   Not applicable

4. *The Proposed Amendments would apply to all acquirors including EIIs.*

   (a) *Should the proposed early warning threshold of 5% apply to EIIs reporting under the AMR system provided in Part 4 of NI 62-103? Please explain why or why not.*

   The same reporting threshold has always driven the early warning and AMR systems. Only the speed of reporting has been affected by the introduction of the AMR system and it was recognized that EIIs might be disqualified on short notice and later re-qualify. To change the reporting threshold for EIIs would lead to mechanical problems and require some significant policy justification and explanation.

   (b) *Please describe any significant burden for these investors or potential benefits for our capital markets if we require EIIs to report at the 5% level.*

   The early warning system is predicated on giving prompt notice of the future intentions of 10%+ holders of voting or equity securities for the purpose of discouraging creeping takeovers. Lowering the reporting threshold to 5% significantly enlarges the scope and purpose of what was intended to be the early warning regime for take-overs where no formal bid had yet been launched. The lower threshold increases the visibility of accumulations by non-insiders at ownership levels that do not necessarily portend an activist agenda or a change of control transaction. The Notice states that lowering the threshold is justified because the reporting threshold in other markets is 5% too.

   Lowering the threshold may create burdens Sacrificing the anonymity of their trading activity at the 5% level may discourage EIIs from coming to Canada in the first place. We think it likely that Staff will hear this view advanced by some investors. Also the proposed reporting threshold may not be as meaningful for issuers with de facto controllers. The incidence of uncontrolled companies is generally understood to be lower in Canada than other jurisdictions. The offsetting benefits are that reporting issuers and the public markets get more data earlier about who their investors are.

5. *Mutual funds that are reporting issuers are not EIIs as defined in NI 62-103 and are therefore subject to the general early warning requirements in MI 62-104. Are there any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% or does the burden of reporting at 5% outweigh the potential benefits? Please explain why or why not.*

   Since mutual funds have ceilings on their holdings of any one issuer and cannot invest to exercise control over an issuer under s 2.2(b) of NI 81-102, it is questionable whether a report filed by a mutual fund is directly comparable to a report filed by a party with no comparable limits on what it can invest. For this reason, a mutual fund should qualify as an EII under any regime with a 5% reporting threshold.

8. *Do you agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving the securities of the reporting issuer? Are these the appropriate*

circumstances to disqualify an EII? Please explain, or if you disagree, please suggest alternative circumstances.

If this disqualification is retained, it should only apply at the moment when exemptions from the proxy solicitation rules are no longer applicable.

9. *We propose to exempt from early warning requirements acquirors that are lenders in securities lending arrangements and that meet certain conditions. Do you agree with this proposal? Please explain why or why not.*

We agree because securities lenders acting in the ordinary course are not directly implicated in the accumulation program and should not have to report.

11. *We are not proposing at this time an exemption for persons that borrow securities under securities lending arrangements as we believe securities borrowing may give rise to empty voting situations for which disclosure should be prescribed under our early warning disclosure regime. Do you agree with this view? If not, why not?*

Borrowing of securities is not customarily done to vote the borrowed securities but rather to effect delivery in connection with short sales that hedge a long position

13. *Do you agree with our proposal to apply the Proposed Amendments to all reporting issuers including venture issuers? Please explain why or why not. Do you think that only some and not all of the Proposed Amendments should apply to venture issuers? If so, which ones and why?*

Our experience suggests that lowering the threshold for venture issuers may constrain their capital access. It might be advisable to lower thresholds for non-venture issuers only.

We welcome the opportunity to have commented on the Notice. If you wish to discuss any of our comments, please call Rene Sorell (416) 601-7947.

Yours very truly,

McCarthy Tetrault LLP