

March 21, 2002

SENT BY COURIER

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 800
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson:

Proposed OSC Rule 62 – 501 and Amendment to OSC Policy 62 - 601 – Prohibited Stock Market Purchases of the Offeree’s Securities by the Offeror during a Take-over Bid

We are writing in response to the Notice relating to the above-referenced proposed Rule (the “Proposed Rule”), and the request for comments included in such Notice. As requested, a diskette containing a copy of this letter is enclosed.

We fully support the Proposed Rule. Subsection 94(3) purchases made through private agreements in the form of crosses, put-throughs and other pre-arranged trades are clearly a cause for concern as they can lead to the unequal treatment of offeree shareholders, a result which is contrary to one of the principal tenets of Part XX of the Act that holders of the same class of securities shall be offered identical consideration.

In *Chapters Inc. and Trilogy Retail Enterprises L.P.* (2001), 24 OSCB 1663 the Commission determined that subsection 94(3) provides a complete “answer” in considering the constraints facing an offeror in making permitted purchases during a take-over bid. As a result of the *Chapters* decision, the use of private agreements in effecting purchases under subsection 94(3) is permissible. If subsection 94(3) provides a complete code, then some shareholders could negotiate a private agreement which in theory could pay them a purchase price in excess of the offer price available to the shareholders. Offeree shareholders therefore may be given less protection from unequal treatment during a bid under subsection 94(3) than is available to them during the pre and post bid integration periods under subsection 94(7). This is an anomalous result, even if it applies to purchases of only 5% of the outstanding securities. We believe that these protections need to be aligned and that the Proposed Rule will achieve this.

Although we believe the Proposed Rule is important to prevent the prospect of unequal treatment of offeree shareholders through the use of private agreements, enforcement will also be important.

We have no comments on the proposed amendments to OSC Policy 62-601.

We are pleased to have had the opportunity to comment on the Proposed Rule. Should you have any questions or comments please feel free to contact either of Mark Trachuk at (416) 862-4749 (e-mail:mtrachuk@osler.com) or Don Gilchrist at (416) 862-6534 (e-mail:dgilchrist@osler.com).

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

MT/jc
Enclosure