June 12, 2003

SENT BY MESSENGER

Ontario Securities Commission
20 Queen Street West
Suite 1900
P.O. Box 55
Toronto ON M5H 3S8

Attention: John Stevenson, Secretary

Dear Sirs & Mesdames:

Notice of Proposed Amendments to Rule 61-501 - *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*

We are pleased to provide our comments on the proposed amendments to Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* (the "Rule") published at (2003) 26 OSCB 1822. As requested in the Notice, a diskette containing our submission in Word format is included with the letter. Defined terms used in the Notice are used in this letter.

1. Collateral Benefit – Definition

The proposed amendments to the Rule will add a definition of "collateral benefit" to the Rule. The Notice indicates that the Commission is proposing that where the benefits in question relate to employment, and are consistent with customary industry practices, benefits will not be regarded as "collateral benefits" under the Rule if related parties of the issuer who receive the benefits do not hold, in the aggregate, more than 10% of the outstanding securities of the affected class. If the 10% threshold is not exceeded it will be up to the issuer to determine whether the benefits are consistent with customary industry practice, and the issuer may have to defend this determination subsequently if challenged.

Our comments relate to the caveat in the definition that the conferring of the benefit is not conditional on the related parties supporting the transaction in any manner. It is our experience that in most going private (now "business combination") transactions it is common, and may be a strategic necessity, to have senior officers and directors committed by way of a lockup agreement with respect to their shares. At the same time the senior officer group may have standard change of control provisions in their employment contracts which, under the proposed

definition, would be construed as a "benefit that a related party of the issuer is entitled to receive, directly or indirectly as a consequence of the transaction." In addition, it may be that the only practical way of dealing with stock options for senior issuers and directors is to provide a cash payment for the difference between the exercise price and the bid price as opposed to having the stock options exercised. From the perspective of the proposed acquiror, it would seem unfair to disqualify the shares of the senior executives from being voted in a subsequent second stage transaction because the issuer, without any input from the acquiror, put in place change of control provisions to protect the employees.

We would further note that our concern with this definition of "collateral benefit" is not restricted to its implications for employment contracts, as the proposed definition will apply to any type of collateral arrangement with management including historical arrangements of any type, whether related to employment or not (although admittedly arrangements not related to employment would be the exception). It is our view that the definition has gone too far to address the possible harm spoken to in the Notice; for example, the 10% of class threshold for employment arrangements is not a measure of the magnitude of the benefit, and therefore is an inadequate proxy for relief from the collateral benefit requirements.

We therefore are of the view that introducing a definition of "collateral benefit" will create more difficulties than it is proposed to solve, and that it should therefore not be proceeded with. If it is concluded that a definition should nevertheless be adopted we would appreciate the opportunity to comment on the wording of the definition.

2. Lockup and Support Agreements

We strongly support the proposal to make part of the Rule a definition of joint actors that states explicitly that the definition does not pick up shares subject to a lockup agreement.

3. Business Combinations

In section 4.1(c), the timing trigger of "proposed" is too vague. In addition, we recommend you revert to the earlier bright line test of registered or beneficial ownership, not both. Further, we find the 2% threshold too low.

4. Minority Approval

We believe that section 8.1(2) of current Rule 61-501 should not be deleted. It is our view that the analysis in Footnote 216 is flawed. A minority vote should not be provided to each series of a class unless the series are affected differently.

5. Additional Comments

In section 6.1(iii), "entity" is misspelled in the last line.

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We are pleased to have had the opportunity to offer you our comments on the proposed amendments to the Rule. If you have any questions or comments, please feel free to contact any of the following:

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Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

JS:jc
Enclosure