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BY E-MAIL

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

Attention: John Stevenson, Secretary

Proposed Amendments to Rule 61-501
and Companion Policy 61-501CP
Request for Comments

We are writing in response to the Ontario Securities Commission's Request for Comments in respect of the proposed amendments to Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions and Companion Policy 61-501CP published on January 9, 2004 (the "Proposal").

Our comments relate to the proposed changes to the definition of "collateral benefit". We have the following two principal concerns:

1. Benefits under Consulting Arrangements

The carve-out in clause (c) of the definition of "collateral benefit" is limited to, among other things, circumstances in which the benefit provided to a related party is in respect of services rendered "... as *an employee or director* of the issuer, an affiliated entity of the issuer or a successor to the business of the issuer ..." (emphasis added). We believe that it would be appropriate to broaden the application of clause (c) to include a person who was formerly an employee or director of the issuer or an affiliated entity of the issuer, and has been subsequently retained as a consultant by the acquiror or successor to the business of the issuer. Under the proposed definition, such a benefit would constitute a "collateral benefit" even if the criteria set out in items (i) through (iv) of clause (c) were satisfied. We are not aware of any public policy

rationale for making such a distinction between the treatment of consulting benefits and benefits received by employees or directors.

Retaining key employees of a target issuer is often a critical component in implementing a successful acquisition, particularly during the initial transition and integration phase. Negotiating limited duration consulting agreements with such key employees is often an appropriate way to accommodate the interests of both parties. Former employees may prefer to limit the extent of their commitment to the new owners of the business to a part-time and/or short-term arrangement, permitting them to pursue other business interests. The acquiror (and the shareholders of the successor to the business of the target issuer) may also benefit from an arrangement that secures the availability of the expertise of certain former employees in the short-term, but avoids the potential liability of assuming a previous employment record at a time when the long-term viability of an ongoing employment relationship has not been determined.

In the event that the benefit provided to a consultant otherwise satisfied the criteria set out in clause (c), we submit that such a benefit should be treated no differently than if it was received in respect of services rendered as an employee or director. Accordingly, the definition of "collateral benefit" under the Proposal should provide that consulting benefits are subject to the same considerations applicable to employment benefits in determining whether a collateral benefit is being conferred.

2. 10% Exclusion under Previous Proposal

Under the proposed amendments published on February 28, 2003, a carve-out to the definition of "collateral benefit" was provided in the event that, among other things, related parties receiving benefits did not hold, in the aggregate, more than 10% of the outstanding securities of the affected class. Under the Proposal, this concept has been replaced by an exception for the conferral of a benefit to a related party who holds less than 1% of the outstanding securities of each class of the issuer, and an exception if the benefit to a related party, net of offsetting costs, is less than 5% of the value of the consideration that the recipient will receive in exchange for its equity securities in the main transaction.

While we are supportive of the new proposed exceptions, we believe that the previously proposed exception based on aggregate ownership of not more than 10% should be retained. We note that in the absence of any collateral benefit being conferred, a change of control transaction in which the acquiror is not a related party may not fall under the definition of "business combination". Accordingly, there would be no requirement for minority approval to be obtained with respect to such a transaction. However, the conferral of a collateral benefit would result in the transaction being considered a "business combination" and minority approval would, as a consequence, be required.

We submit that in circumstances in which related parties receiving a benefit do not hold, in the aggregate, more than 10% of the outstanding securities of the affected class, an additional carve-out to the "collateral benefit" definition should be available so that this fact alone does not trigger the requirement for minority approval to be obtained. This situation would

arise if the exceptions in the Proposal (namely, the 1% and 5% tests) do not apply, but benefits are received only by persons who collectively hold a relatively small percentage of the securities of the affected class.

The availability of the 10% exception in these circumstances would ensure that an otherwise arms-length transaction would not be subject to the minority approval requirement due solely to the conferral of an employment (or consulting) benefit to persons holding a relatively small number of securities. It is unlikely that such persons would affect the outcome of the transaction. Accordingly, we do not believe the public policy rationale underlying the minority approval requirement would be compromised by such an approach and, importantly, the minority approval requirement would not be unduly imposed on transactions where potential conflict of interests are limited to a small number of security holders.

Please do not hesitate to contact the undersigned if you wish to discuss any of the above comments.

Yours very truly,

James R. Reid

JRR/er

cc: Ralph Shay
Director, Take-over/Issuer Bids, Mergers & Acquisitions
Ontario Securities Commission