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Dear Sirs/Mesdames:

Re: NI 62-104 Comment Letter

This letter represents my personal and without prejudice comments (and not those of the firm or any client) in connection with your request for comments with regard to NI 62-104. I apologize for the lateness of this letter. My comments (in no particular order) are:

1. The "joint actors" deeming provision in proposed section 1.7(2) should provide expressly for "Chinese wall" carve-outs, as a presumption would provide for.

2. Proposed section 2.21(3) is inappropriate and will in my view discourage bids. A bidder may have to make changes in light of developments beyond its control, including, for example:

- defensive or other actions of the target (e.g. special or increased dividends) or third parties, and

- changes in laws or market conditions.

If there is a shortness of time concern, we recommend that a longer period be required (e.g. 20 days, instead of 10). Also, we should conform with U.S. tender offer requirements given the frequency of cross-border bids.

3. As in the U.S., a much broader exemption should be provided from "identical consideration/equal treatment" provisions in respect of employment arrangements with officers, as well as employees. This is not clear under proposed section 2.22(3)(c). Also, the limits in (c)(iv) are inappropriate and inconsistent with the U.S.

4. The strict financing requirement in Canada under section 96 of the OSA and proposed section 2.24 of the rule is both inconsistent with the U.S. position and very expensive (e.g. commitment and "ticking" fees payable very early in the process and for an extended period) for a hostile bidder (as well as being difficult absent due diligence access). I recommend that the nature of any proposed financing arrangements be required to be disclosed, but, as with arrangements, that firmly committed financing not be required. This is always a major issue in cross-border transactions, and in my view inappropriately discourages bid transactions.

5. It is not clear that the "private agreement" exemption, which was a carefully balanced provision that arose over many years, has proved problematic in practice and therefore that there is any real cost-benefit justification for these changes, which restrict the freedom of major shareholders. In any event, s. 5.3(1)(e) is very hard to apply, as the price agreed is presumably the value.

6. It is very difficult for a hostile bidder to determine beneficial ownership levels, especially in the case of book-entry only securities. Perhaps sections 5.3 and 5.13 should be based on knowledge, as a solution.

7. Appendix E to NI 62-103 already has a value disclosure requirement in para. 1(i) of Appendix E. New para. 1(e.1) seems duplicative. A description of the take-over bid exemption being relied on and supporting facts should not be required in the press release (as opposed to the formal report). The forms of these press releases are

already very technical. I would in fact suggest greater flexibility in the press release contents, as opposed to the report.

8. The definition of "equity security" has always been hard to apply, as most common shares have no "right" to participate in earnings, residual or otherwise, unless the board so decides.

9. An issuer bid should not include an offer for non-convertible preferred shares, just as it does not include an offer for non convertible debt securities, and just as an insider bid excludes them as they are neither voting nor equity securities. They are also not "affected securities" under OSC Rule 61-501.

10. The cross-reference to NI 21-101 in the definition of the term "marketplace" is difficult, because of para. (d) thereof (which is always difficult to understand and deal with!).

11. If an offeror is a trust, as under U.S. securities laws, the definition of the term "offeror" should not include its trustee(s). They should have no personal liability except akin to that of directors.

12. In section 2.2(3)(b), it is not clear how the 5% test applies to a class of convertible securities. It should be clarified that the 5% test applies to them (and the underlying securities) on an "as converted" basis, especially in light of section 2.28. Also, section 2.2(3)(c) is anti-competitive and should not prohibit purchases via an ATS or in other countries. Sections 2.2(3)(e), (f) and (g) are new and undesirable, as they have increasingly become difficult to work with in other contexts and do not apply today. Also consider whether they are workable under section 2.4(4).

13. Section 2.3(1) should not prohibit purchases under section 5.8 as it may be necessary to deal with departing employees. It is the flip side of section 2.5(3) re employees.

14. Section 2.21 should be expressly limited to Canadian securityholders. Often non-Canadian holders must be offered different consideration.

15. Under sections 5.5(c) and 5.12(c), when is a published market "in Canada" if it is a market that disseminates prices electronically? Is it to be based on the location of the server or of the regulator of the market?

16. The TSX allows for 10% of the public float in a normal course issuer bid. Should this also be provided for in section 5.9(i)(b) and (c)?

17. In sections 6.2 and 6.3, via section 6.1, concert parties should also be excluded.

18. To facilitate joint hearings, as are common in take-over bids, the Commission in Ontario should also be able to grant exemptions.

19. It should be made clear that a bidder offering securities is not required to incorporate any of the target's documents or include disclosure relating to the target, as it is not fair to make an offeror and/or its personnel liable for the target's disclosure record. While financial statements are provided for in item 19(2) of Form 62-104 F1, this should be broadened.

20. Item 15 of Form 62-104 F3 is always worrying, as it may compel premature disclosure.

21. Should para. 2.9 of CP 62-104CP also refer to other exchanges (e.g. the CNQ)?

Yours truly,

Simon A. Romano

SAR/he