FRASER MILNER CASGRAIN LLP

July 9, 2007

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

Dear Mr. Stevenson:

Subject: Proposed Ontario Securities Commission Rule 62-504

We are pleased to have the opportunity to comment on proposed Ontario Securities Commission Rule 62-504.

GENERAL COMMENT

In our comment letter of July 28, 2006, regarding proposed National Instrument 62-104, we expressed strong support for the proposal to have a national instrument containing all the take-over bid and issuer bid requirements. Virtually all formal take-over bids and issuer bids carried out in Canada are conducted nationally, and the logic favouring a national instrument is highly compelling from the standpoint of regulatory efficiency and user friendliness. The establishment of a national instrument would be consistent with a fundamental principle of securities regulation as set out in paragraph 5 of section 2.1 of the *Securities Act* (Ontario): "The integration of capital markets is supported by responsible harmonization and co-ordination of securities regulation regimes."

We continue to believe that a national instrument is preferable to the fragmented regulatory regime now being proposed, despite the current efforts of the securities regulatory authorities to make the provisions of the different sets of legislation substantively equivalent. Our reasons are similar to those set out in the comment letter of the Securities Law Subcommittee of the Business Law Section of the Ontario Bar Association, dated June 20, 2007. The detailed rule-making process was developed in Ontario with a view to striking a proper balance between the need for government oversight and the ability of securities regulators to be responsive to changes in an industry that is in a constant state of innovation. In our view, no compelling public interest purpose is served in prohibiting the use of the rule-making process to provide the capital markets with the benefits of a comprehensive national instrument.

COMMENTS ON SPECIFIC PROVISIONS

Section 4.1

1. Neither the Bill 187 amendments to Part XX of the *Securities Act* nor proposed Rule 62-504 address the current uncertainty regarding the extent to which connected transactions, such as an asset transaction between a bidder and a security holder of the target issuer, are considered to be collateral benefits. We described this issue in detail in our comment letter of July 28, 2006. Ontario Securities Commission Rule 61-501 and proposed Multilateral Instrument 61-101 specifically address connected transactions as distinct from collateral benefits, but there is a vacuum in the take-over bid and issuer bid legislation. In the absence of a legislative resolution of the issue, we suggest that guidance be provided in a companion policy to Rule 62-504.

2. For purposes of clarity, we suggest incorporating subparagraph (2)(b)(iii) into clause (2)(b)(ii)(B).

Part 6

3. In the introductory words of section 6.1 and subsections 6.2(1) and 6.2(2), we suggest inserting "only" before "if", for purposes of clarity.

Section 6.2

4. Paragraph (1)(b) should be restricted to the circumstance in which there is no foreign requirement to mail a bid to security holders of the target. Bidders for foreign targets should not be burdened with Ontario requirements that are more onerous than the requirements that apply in the target's home jurisdiction. The foreign target exemptions in sections 100.3 and 101.4 of the revised *Securities Act* should serve the worthwhile objective of decreasing the likelihood that Canadian security holders will be excluded from participation in bids for foreign targets. Imposing additional regulatory burdens on the bidders would be counter-productive to accomplishing this objective. Moreover, this type of requirement lends itself to inadvertent breaches and, consequently, the making of illegal take-over bids and issuer bids. For example, an Australian bidder making a take-over bid for an Australian target with no connection to Canada and a negligible number of Canadian security holders may not address itself to the fact that Canadian provinces require advertisements. A bidder that is aware of the requirement may very well decide that the time and expense involved in placing an advertisement in Canada outweigh the benefit of including Canadians in the bid.

Acting Jointly or in Concert

5. In our comment letter of July 28, 2006, we set out the reasons for our view that the description of the concept of "acting jointly or in concert" in the current legislation lacks sufficient precision to enable a user to properly interpret the concept except in the clearest

of situations. As the issues have not been addressed in Bill 187, we suggest that interpretative guidance be provided in a companion policy to Rule 62-504.

Consequential Amendments and Revocations -- Section 9.5 - NI 62-103

6. In the proposed amended definition of "early warning requirements", the inclusion of section 102.2 of the revised *Securities Act* and of the corresponding provisions of MI 62-104 (the "5% acquisition requirements") is problematic, unless additional amendments are made to NI 62-103. Currently, the 5% acquisition requirements are not included in the definition of "early warning requirements" in NI 62-103, but are instead referred to as "acquisition announcement provisions". The proposed change would create anomalies or redundancies in a number of sections of NI 62-103, including sections 2.3, 3.1 (which would also conflict with section 7.2 of Rule 62-504) and 3.2.

7. The proposed definition of "offeror" refers to the definition in securities legislation, but the revised *Securities Act* will have two different definitions of "offeror", one in section 89 and the other in section 93. (While the section 93 definition is limited in its application to two sections of the Act, the section 89 definition is also limited in that it only applies to Part XX.) A possible alternative definition could be "an entity that makes a take-over bid, an issuer bid or an offer to acquire, as those terms are defined in securities legislation".

Form 62-504F1

8. We are unclear as to why this Form does not begin with a "Defined terms" section like the other Forms.

9. In Item 5, we suggest deleting the second sentence as it overlaps with the requirement for prospectus-level disclosure in Item 19.

10. In Item 7, we suggest deleting the words "has been made".

11. In Item 12, the information required in clause (c) may be confusing to security holders and is unlikely to give them meaningful assistance in determining whether to tender their securities to the bid. The wording reflects a legal requirement, and use of the word "whether" implies otherwise. In addition, an assertion that one's own belief is reasonable does not add value to the disclosure and is arguably redundant. Given that the failure of a bid due to the loss of financing after the commencement of the bid has been virtually a non-existent occurrence in Canada, we suggest that consideration be given to deleting clause (c) or, at the very least, changing "whether" to "that" and deleting "reasonably".

12. In Item 15, clauses (d) and (e) are not relevant to lock-up agreements, and clause (c) does not appear to be necessary, as the required information is covered by "the terms and conditions" in clause (b). Clauses (d) and (e) should be explicitly confined to collateral benefits.

13. Also in Item 15, there are references in clause (d) to sections of the Instrument (presumably proposed Multilateral Instrument 62-104), but "Instrument" is not defined in the Form. (See also comment 18 below.) In addition, the clause appears to require a determination of the exact value of the benefit even though the Instrument does not require it. We suggest that clauses (d) and (e) be changed to simply require (i) disclosure of how the collateral benefit complies with section 4.1 of Rule 62-504, and (ii) the applicable disclosure mandated by section 4.1.

14. Regarding Item 18: When a formal valuation is prepared for a take-over bid, the bid is virtually always an insider bid and the valuation is provided pursuant to the requirements of OSC Rule 61-501 or AMF Regulation Q-27. (If a valuation is not required by those instruments, there might be a fairness opinion, but not a formal valuation.) Accordingly, the valuation requirements of Rule 62-504 should be aligned with those of Rule 61-501, Regulation Q-27 and proposed Multilateral Instrument 61-101. Paragraph 2.3(1)(c) of each of Rule 61-501, Regulation Q-27 and proposed MI 61-101 require a summary of the formal valuation only if the valuation is not included in its entirety in the bid circular. In fact, the valuations themselves normally include a statement to the effect that reading only parts of the valuation (which generally comprise the summary) without reading the entire valuation could be misleading.

15. Regarding Item 19: In order not to discourage unsolicited securities exchange bids by making them unduly onerous, it should be stated in a companion policy that the Director will consider granting exemptive relief, on an expedited and confidential basis, to allow a bidder to exclude information in the take-over bid circular that can only be derived from disclosure to which the offeror does not reasonably have access regarding the offeree issuer or any of the offeree issuer's assets.

16. Item 23 should not require the circular to include other information that has already been publicly disclosed. Taken literally, this would include all material information in the target's public filings. This comment also applies to the corresponding Items of the next three Forms.

17. In Item 25, in the first line, and in the corresponding Items of the other Forms, we suggest making "jurisdiction" plural.

FORM 62-504F2

18. In "Part I General Provisions", under (a) "Defined terms", there is a reference to Multilateral Instrument 62-104, rather than Part XX of the *Securities Act*. This also is the case for the three subsequent Forms. In addition, there are a number references to sections of MI 62-104 in this and other Forms. This may have been intended, but we are bringing it to your intention in case it was not.

19. In Item 4, we suggest deleting the second sentence as it overlaps with the requirement for prospectus-level disclosure in Item 21.

20. Regarding Item 7, see comment 11 above.

21. Regarding Item 17, see comments 12 and 13 above, except that "Instrument" is defined in this Form.

22. Regarding Item 20, see comment 14 above, which applies equally to issuer bids. (The applicable provision in Rule 61-501, Regulation Q-27 and proposed MI 61-101 is paragraph 3.3(1)(c)).

Form 62-504F3

23. Regarding Item 9, see comments 12 and 13 above, except that "Instrument" is defined in this Form.

Form 62-504F5

24. Regarding the various section references in Item 3, see comment 18 above.

Thank you for considering these comments. If you have any questions regarding them, please contact Ralph Shay at 416-863-4419 or at ralph.shay@fmc-law.com.

Yours truly,

FRASER MILNER CASGRAIN LLP