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June 12, 2013

Dear Sir/Madame:

Re: Proposed National Instrument and Companion Policy 62-105 *Security Holder Rights Plans* (the "Proposed Rule ")

The Investment Industry Association of Canada ("IIAC" or "the Association") appreciates the ability to comment on the Proposed Rule. The Association supports the stated purpose of the Proposed Rule, to establish a comprehensive regulatory framework that provides target boards and shareholders with greater discretion over the use of Rights Plans, reduce the frequency where regulatory intervention may be necessary and maintain an active market for corporate control. We believe it is appropriate that shareholders are afforded the ultimate decision of whether to permit a rights plan to remain in place, with regulatory intervention only under limited circumstances.

General

1. **In your view, is the Proposed Rule preferable to the status quo, amending the bid regime to mandate "permitted bid" conditions and disallow Rights Plans, or amending NP 62-202 to provide specific guidance on when securities regulatory authorities would intervene on public interest grounds to cease trade a Rights Plan?**

   The Proposed Rule is preferable to the above noted scenarios, in that it provides a clearly defined context for the operation of Rights Plans. This will result in consistency and increased predictability, and remove the current concern relating to arbitrary and inconsistent results from regulatory intervention.

2. **Do you think that implementing the Proposed Rule will reduce the need for securities regulators to review Rights Plans through public interest hearings? Please provide details.**

   Yes. Given the limited circumstances that form the basis for intervention by securities regulators articulated in Part 3 of the Companion Policy, we anticipate that the need for review will be significantly reduced.

3. **Do you think the Proposed Rule will have any negative impact on the structure of take-over bids in Canada? Please provide details.**

   It is difficult to anticipate whether the re-allocation of costs relating to shareholder votes vs. regulatory hearings will have effects on the structure of bids.

4. **Is the discretion given to a board of directors under the Proposed Rule appropriate?**

   Given the fact that decisions regarding Rights Plans are subject to a shareholder vote within 90 days, we do not believe there is an inappropriate amount of board discretion.

5. **In your view, would the increased leverage of target boards and greater shareholder control over the use of Rights Plans that would result under the Proposed Rule unduly discourage the making of hostile take-over bids? If you believe hostile take-over bids will be inhibited, please explain whether or not you support that impact or have concerns. If you believe that the Proposed Rule may unduly discourage hostile takeover bids, please explain how you would modify the Rule to address your concerns.**

We do not believe the Proposed Rule will unduly discourage the making of hostile take-over bids. Although the 90 day time frame under the Proposed Rule will likely lead to a longer period before a hostile bidder could take up shares under the bid as compared to the current regime, we do not think this time frame is so long as to discourage most bidders.

6. Do you believe that other changes or consequential amendments to applicable securities legislation will be necessary if the Proposed Rule is implemented? Please explain.

We have no response to this question.

Specific

7. The Proposed Rule contemplates that Rights Plans are effective following adoption provided that they are approved by shareholders within 90 days.

(a) Is this timing appropriate? Should issuers have more or less than 90 days to obtain shareholder approval of a Rights Plan?

Yes, absent unusual circumstances, 90 days would ordinarily provide sufficient time to seek alternatives to a hostile bid and ensure the issuer obtains the highest reasonably available price for its securities. If the company believes it requires more time, for instance, in situations where the nature of the business is highly complex, it could try to make that case to its shareholders by asking them to approve a Rights Plan with a limited life (eg: 120 or 180 days).

(b) Should the time period for shareholder approval be different depending on whether the Rights Plan was adopted in the absence of a proposed take-over bid or adopted in the face of a take-over bid?

The time period for shareholder approval should be consistent regardless of the circumstances under which the Rights Plan was adopted.

8. The Proposed Rule contemplates that a Rights Plan that is adopted after a take-over bid is made may remain in effect for a 90 day period pending security holder approval. We note that this 90 day period is longer than both the minimum 35 day period that a bid is required to be outstanding under applicable securities legislation and the 45 to 55 day period by which securities regulators have historically ceased traded a Rights Plan when successfully opposed by a bidder. Please provide your comments on the effect of this extension of the time.

We believe the 90 days is appropriate for the reasons articulated in 7(a) above.

9. While the Proposed Rule contemplates that Rights Plans are effective following adoption provided that they are approved by shareholders within the specified 90 day period, it does not mandate that a shareholder meeting be held within this 90 day period. This means, in effect, that a Rights Plan can remain in place for 90 days even if the board of directors choose not to hold a meeting. Should the Proposed Rule address the circumstance where an issuer does not take steps to call a shareholder meeting after a Rights Plan has been adopted?

There should not be any additional provisions to deal with this circumstance. The 90 day period gives the issuers time to canvass for other bidders, and saves the expenses of merely going through the motions if the intention is not to challenge the bid, but to use this time as a means of trying to obtain a superior bid for the company.

10. The Proposed Rule contemplates that all Rights Plans must be re-approved by shareholders by no later than the date of the issuer's annual meeting in each financial after the issuer first obtained security holder approval.

(a) Is this timing appropriate?

We do not believe that there is benefit commensurate with the costs of obtaining annual approval of Rights Plan in the absence of a take-over bid. We recommend that the current 3 year approval requirement be retained in the absence of a take-over bid.

(b) Should Rights Plans that were adopted in the absence of a proposed take-over bid be effective for a longer period of time than Rights Plans that were adopted in the face of a take-over bid?

As stated above, Rights Plans adopted in the absence of a proposed take-over bid should be effective for 3 years before shareholder approval is required. This would not prevent shareholders from voting to remove the Rights Plan if a hostile bid is made. Rights Plans adopted in the face of a take-over bid should be subject to approval at the next shareholder meeting if the take-over bid is not successful.

11. The definition of "security holder approval" in the Proposed Rule does not exclude votes cast by management of the issuer. Please explain whether or not you believe this is appropriate. Does your answer depend on whether the security holder approval is being sought in respect of a Rights Plan that was adopted in the absence of a proposed take-over bid as compared to one that

was adopted in the face of a take-over bid? Would you like to see any other any other voting issues addressed?

There are different perspectives on this issue, based on the circumstances of the transaction. As such, it is not possible to articulate a consensus viewpoint on this matter.

Another voting issue that should be addressed is the provision in section 4 which requires that, if an issuer, in compliance with the terms of a rights plan, waives or modifies the application of the rights plan, or any provision of the rights plan, with respect to a take-over bid, the issuer must grant the same waiver, or make the same modification, with respect to any other take-over bid that was announced or commenced as of the date of the waiver or modification or that is announced or commenced while the first mentioned take-over bid is outstanding. This could have the effect of creating a "collective action" problem, as articulated in the Notice, which could favour a coercive partial hostile bid with an expiry date prior to a board supported bid for 100% of the securities. This problem could be addressed by only applying the provision where any other take-over bid is for at least the same number of securities as the board supported bid.

12. Section 3 of the Proposed Rule limits the effectiveness of rights plans to take-over bids and the acquisition of securities of an issuer by any person. Does this limitation unduly restrict the potential applications of rights plans? Should rights plans be permitted to be effective against irrevocable lock-up agreements?

We believe the limitation of the Proposed Rule to take-over bids and the acquisition of securities is unduly restrictive. It is not clear why the current application of Rights Plans to irrevocable lock-up agreements should be changed, as the securities that are subject to the lock-up agreements are effectively equivalent to ownership. Exempting such lock-up agreements may create unintended loopholes that thwart the intention of the Proposed Rule.

13. Do you agree with the application of the Proposed Rule to material amendments to a Rights Plan? Do you believe that the nature of what may constitute a material amendment should be more fully addressed in the Proposed Rule or the Proposed Policy?

It is appropriate to apply the Proposed Rule to material amendments to a Rights Plan, however, it would be helpful if the Proposed Rule clearly articulated what the term "material" is intended to encompass.

14. Should the Proposed Rule or Proposed Policy facilitate the ability of dissident

Shareholders, or a bidder to challenge a pre-approved Rights Plan beyond the provisions of applicable corporate law by, for example, setting a minimum time period within which a meeting must be held or by dispensing with minimum ownership requirements?

In order to provide consistency and predictability, any vote to remove a previously adopted Rights Plan should be held within 90 days of a bid having been made. The 5% ownership threshold to call a meeting should also remain in place, as a lower threshold may result in meetings being called where there is a low probability achieving the 50% support to remove the Rights Plan.

15. Section 5 of the Proposed Rule provides a general exception from security holder approval for new reporting issuers. Should this exception be limited or subject to conditions depending on the manner by which the issuer becomes a reporting issuer or the circumstances of the transaction (for example, if the new reporting issuer is a spin-out of another reporting issuer)?

We do not have strong views on this issue

16. The Proposed Rule includes a transition provision in section 10. Is the time period contemplated in this provision appropriate?

The transition period appears reasonable.

Yours sincerely,

Susan Copland