



June 12, 2013

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

- and -

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 2S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

CSA Notice and Request for Comment on Proposed Amendments to Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and National Policy 62-203 Take-Over Bids and Issuer Bids and National Instrument 62-103 Early Warning System and Related Take-over Bid and Insider Reporting Issues (the “Early Warning Draft Amendments”)

This letter is submitted on behalf of the Institute of Corporate Directors (“ICD”) in response to the invitation to comment on the CSA Notice and Request for Comment on the Early Warning Draft Amendments.

The ICD is a not-for-profit, member based association with more than 7,200 members and 11 chapters across Canada. Our vision is to be the pre-eminent organization in Canada for directors in the for-profit, not-for-profit and crown sectors. Our mission is to foster excellence in directors to strengthen the governance and performance of Canadian corporations and organizations. This mission is achieved through education, certification and advocacy of best practices in governance.

We commend the CSA for proposing the Early Warning Draft Amendments and thank the CSA for providing us with the opportunity to comment on this important topic.

Overview

The Early Warning Draft Amendments will, among other things:

- Decrease the trigger for early warning reporting from 10% of the outstanding securities of a class to 5%;
- Require the filing of an early warning update in the event that a reportable position is either decreased by an increment of 2% or more, or falls below the 5% reportable threshold;
- Include certain equity derivative positions and securities lending positions in the calculation of what must be reported to better capture hidden ownership and empty voting arrangements;
- Disqualify eligible institutional investors (EIs) that intend to solicit proxies on matters relating to the election of directors or to reorganizations, amalgamations, mergers, arrangements or similar business combinations from using the more permissive alternative monthly reporting system provided under National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (the AMR); and
- Require more disclosure in an early warning report and an alternative monthly report, particularly with respect to the purpose and intentions of the investor.

Comments

For the reasons listed below the ICD generally agrees with the Early Warning Draft Amendments and is of the view that such amendments, including lowering the early warning reporting threshold (the “Early Warning Threshold”) from 10% to 5% and enhanced scope of disclosure obligations, will provide greater transparency about significant holdings of an issuer’s securities.

- The director community is increasingly being asked/expected to engage with shareholders. Key to doing so is to know who your shareholders are. The Early Warning Draft Amendments will provide greater transparency in this regard.
- The increase in shareholder activism enhances the materiality of both the market and directors knowing earlier, who the significant shareholders are.
- Capturing hidden ownership and empty voting arrangements is welcomed as substance should override form. The Mason/Telus experience highlights the need to shed sunlight on empty voting.
- The reduction of the Early Warning Threshold from 10% to 5% would place Canada in a consistent position with major capital market jurisdictions such as the United States, Australia, Japan and Hong Kong. We note that the U.K. and Germany have a 3% threshold.

Further Consideration

We support disqualification of EILs from using the AMR where they intend to solicit proxies. The CSA should consider whether expansion is required to cover “acting in concert” situations.

We support the application of the Early Warning Draft Amendments to venture issuers generally, but before doing so, would recommend that the CSA conduct research to ensure that such application would not unduly impair the ability of venture issuers to obtain financing.

Conclusion

In order to facilitate shareholder engagement on a playing field that is consistent with major capital market jurisdictions globally, the ICD supports the Early Warning Draft Amendments in accordance with this letter.

The ICD is pleased to have had an opportunity to provide you with our comments. If you have any questions regarding our comments, please contact the undersigned.

Yours truly,



Stan Magidson, LL.M., ICD.D
President & CEO