Smoothwater CAPITAL CORPORATION

July 9, 2013

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Prince Edward Island Securities Office
Office of the Superintendent of Securities, Government of Newfoundland and Labrador
Department of Community Services, Government of Yukon
Office of the Superintendent of Securities, Government of the Northwest Territories
Legal Registries Division, Department of Justice, Government of Nunavut

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Dear Sir/Madame:

Re: Proposed Amendments to Multilateral Instrument 62-104 *Takeover Bids and Issuer Bids*; National Policy 62-203 *Take-over Bids and Issuer Bids; and National instrument 62-103 Early Warning System and Related Take-over Bids and Insider Reporting Issues* (the "Proposal")

We have reviewed the Canadian Securities Administrators ("CSA") Notice and Request for Comment on the Proposal released on March 13, 2013 and we thank you for the opportunity to provide our comments.

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Smoothwater Capital Corporation is an “activist” investor focused on the small and mid-cap Canadian public market, and is led by Stephen J. Griggs, a financial services executive and a well known corporate governance expert and commentator, having acted as the Executive Director of the Canadian Coalition for Good Governance for three years.

Overview

The following is a summary of our submission:

1. We believe that the current disclosure level of 10% is fair and reasonable and balances the legitimate privacy rights of investors with the need of the market to know if a shareholder is able to materially influence or possibly acquire control over the company.

2. As a practical matter, the change would primarily impact the large number of smaller issuers, which have unique characteristics that make the current 10% level appropriate.

3. The technical, but rarely used, corporate law ability of some 5% shareholders to requisition a meeting of shareholders is no reason to impose a 5% disclosure obligation.

4. There is no public policy change that has occurred since this rule was introduced which would suggest that it should be fundamentally altered to the detriment of many market participants. In particular, there is no new evidence that market transparency should trump the longstanding privacy rights of shareholders.

5. The pressure to change the rule has primarily come from the director/issuer community, many of whom would like to have more knowledge of their shareholders as it would be convenient for them. There is little, if any, support for this major change from investors. In fact, there is reason to believe that some boards would use this new disclosure obligation to further entrench themselves to the detriment of the shareholders.

6. A 5% disclosure threshold would impose a new and very significant compliance burden on many institutional shareholders.

7. Certain technical changes are required to ensure that true economic ownership is captured in the disclosure rules.

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Trading and Ownership Confidentiality is a Fundamental Right in the Canadian Markets

The ability for a market participant to keep its identity confidential is a fundamental right in the Canadian capital markets and virtually all market participants strongly prefer to keep their identities unknown.

In fact, many sophisticated investors go to great lengths to maintain the secrecy of their trading activities, as they believe that to do so ensures that they obtain best execution (e.g. dark pools etc.) in the highly concentrated Canadian market. An entire industry has developed to seek out this private information (such as Bloomberg, Thompson, proxy solicitors etc.), which indicates the significant economic importance of keeping share ownership and trading highly confidential.

We believe that the ability to keep ownership and trading confidential is an important part of the efficiency and effectiveness of our capital markets and should be the overriding concern of regulators. For example, a shareholder who is building its position often needs to keep its activities confidential to avoid a number of common predatory trading practices, such at "front running" of their orders, which increase their trading costs and negatively impact their returns.

Any requirement to publicly disclose one's holdings should only be imposed after careful thought and when it would clearly and overwhelmingly improve the efficiency of the public markets, overriding the individual value of market confidentiality. It is not clear that this cost/benefit analysis has been carried out.

10% Disclosure Level is Reasonable – No Policy Need to Change

It is our view that the current requirement to disclose one's ownership when it reaches 10% and in increments thereafter is reasonable and accepted by the market and there is no overwhelming policy reason to change it, either up or down.

The public policy reason to require disclosure of one's holdings when they reach 10% is to provide information to the market about a shareholder who may be able to have significant influence over the company through the exercise of its votes for directors (hence the requirement to disclose a 10% position), or who may be in the process of acquiring stock for the purposes of making a take-over bid (hence the obligation to disclose additional purchases). The Proposal provides insufficient support for the position that this public policy would be better served by a reduction in the reporting threshold to 5%.

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Exercise of Requisition Rights is Minimal in Practice

The CSA has suggested that disclosure of a 5% position should be required since a shareholder with 5% of the shares of many Canadian incorporated corporations has the legal ability to requisition a shareholder meeting. While this technical right may exist under certain corporate statutes, in practice it is very difficult if not impossible for a shareholder to exercise this right.

Under most corporate statutes, while a 5%+ shareholder may requisition a meeting, it is up to the incumbent board to actually call the meeting at such time as it deems appropriate. Generally, if the board refuses to call a meeting or simply does not respond, the only way that a requisitioning shareholder can force a meeting to take place prior to the next AGM is to call the meeting itself or to apply to the Court for an order. This is not only expensive and time consuming, but puts the requisitioning shareholder at a significant disadvantage. Based on our understanding, the case law suggests that the courts will allow a board up to 150 days to call a meeting – rendering the power to requisition a meeting frequently of little value.

In addition, the board has the full resources of the corporation at its disposal. By contrast, a requisitioning shareholder must be prepared to use its own resources to solicit other shareholders, with limited ability if successful to be repaid by the corporation. As a result, for the vast majority of shareholders, the requisition right is used only in extreme situations and only when the shareholder has the economic ability and interest to undertake a time consuming and costly fight with an incumbent board.

With respect, the ability to ask for a shareholder meeting to be held at which all shareholders can vote, is not a sufficient policy reason to require ownership disclosure at a 5% level.

Market Transparency Should Not Trump Privacy Rights

The CSA has also suggested that more market transparency is good for the market, which is often the case in other areas. However, the purpose of the share ownership disclosure rule has not historically been to give directors better information about their shareholders or to provide a high level of ownership “transparency” to the market, which would be counter to the fundamental confidentiality right referred to above. If a shareholder wishes to be known, it can at any time make its holdings known to the company and/or to the markets, but there is currently no right on the part of issuers or directors to obtain this information and there has been no market efficiency reason identified to change this principle.

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No Overwhelming Need to Follow Other Jurisdictions

We do not believe that it is necessary to reduce the threshold simply to conform Canadian disclosure rules to “global standards”, in particular those of the U.S., without considering the important differences in our markets and how they have historically operated.

There are many structural differences between the Canadian and US markets, such as capitalization, liquidity, depth and investor concentration, which can make a particular US policy inappropriate for Canada. This has been frequently recognized by the CSA as it develops a “Canadian approach“ to securities regulation – for example in the measured CSA response to the US “Sarbanes Oxley” rules or to US executive compensation disclosure.

While we appreciate the CSA’s attempts to promote regulatory consistency across countries, the efficiency and effectiveness of our Canadian capital markets should be the prime concern of the CSA.

Impact of Proposal is Mostly on Small and Mid-Cap Issuers

From a practical perspective, decreasing the reporting threshold to 5% will provide increased transparency primarily for small and mid-size issuers as the majority of large Canadian issuers (by market capitalization) are subject to the SEC’s 5% reporting threshold due to the fact that they are cross listed on a U.S. exchange.

Accordingly, we believe that the CSA should focus its policy consideration on the impact of the Proposal on small and mid-cap issuers, rather than assuming that the factors that apply to Canada’s largest corporations apply equally to the vast majority of Canadian issuers.

Need to Consider the Unique Features of Smaller Issuers

We do not believe that the additional transparency with respect to small and mid-size issuers justifies the potential harm to the Canadian market resulting from the Proposal. It appears that the CSA has not fully considered some of the unique features of smaller issuers in the Canadian market and whether the 10% threshold for investors should be maintained.

In the case of the many smaller issuers with significant shareholders, it is often necessary to acquire a toehold position before the board will take a shareholder seriously. The market for these securities is frequently illiquid and a position can often only be acquired through the markets if the purchaser can remain unknown (as is its right).

Furthermore, many investors are of a size such that they must hold relatively large minimum positions in an individual “name”. For example, if an investor has a $300 million small cap portfolio, they will often have a policy requiring them to hold up to 50 stocks, or a minimum of $6 million per name. For a smaller issuer, this could easily exceed 5% of the outstanding

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shares. The requirement to disclose this holding could be very detrimental to their trading strategy and could, if fact, cause many investors to abandon this important segment of the Canadian capital markets.

Accordingly, we believe that it is reasonable to require a shareholder to disclose its position in a smaller issuer at a 10% level, given that these securities are generally highly illiquid and it is very difficult to acquire even a 5 or 10% position without disclosing that intention to the market.

One-Day Delay on Further Acquisitions is Unnecessary in Today's World

We understand that the purpose of the proposed one business day restriction on additional purchases after a specified percentage of shares has been reached is to give the market time to absorb news of a takeover bid before the acquirer is permitted to make additional purchases. While this may make sense in the context of an actual bid for control, we do not see the logic of its application to a low level of ownership such as 5% or 10%.

In any event, a one-day moratorium on further acquisitions makes little sense in an age where the dissemination and absorption of information is almost instantaneous and is easily and freely available to all shareholders.

Pressure for Change Coming from Potentially Conflicted Directors

Much of the impetus for these proposed changes has come from the Canadian director/issuer community. We are not aware of any shareholders or shareholder groups who have been advocating for this radical change in the Canadian disclosure system.

The Institute of Corporate Directors has made a submission on the Proposal, arguing in favour of it largely on the basis that it would be useful for directors to know who their shareholders are as the board increases its shareholder engagement activities and is more often dealing with "activist" shareholders than in the past.

With respect, this "nice to have" argument is not sufficient to justify major changes to the disclosure regime that could be materially detrimental to many shareholders who have a fundamental right to keeping their identify and trading activities confidential.

Furthermore, it is our experience that many directors are unfortunately focused on preserving the *status quo* and are personally concerned about changes in the shareholder base of the company on whose board they sit (or, as is commonly said, "the directors' company"), as a change of shareholders may well lead to a change in the board. While this is not the case with all directors, our experience in the small and mid-cap markets suggests that many directors would prefer to have a reduced disclosure threshold out of self-interest rather than for sound public policy reasons.

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Adding significant compliance burden

As indicated above, many investors in smaller companies acquire at least 5% of the outstanding shares and actively trade in the stock – creating liquidity and market efficiency. The adoption of a 5% threshold will greatly increase the magnitude of their reporting obligations, which would comprise a significant new compliance burden, without providing public policy or broad market benefits outweighing the potential compliance costs.

Equity Derivatives and Securities under Lending Arrangements

We believe that there is a need to clarify the application of the current Proposal with respect to certain unusual circumstances, but we support the fundamental policy of full disclosure of economic ownership. We agree that there should be full transparency of the economic ownership of securities, including through the use of derivatives and securities lending arrangements by including derivatives and securities lending arrangements when calculating whether the ownership threshold has been reached.

We thank you for the opportunity to comment on this important issue. If you have any questions, please contact me at 416.644.6582 or at sgriggs@smoothwatercapital.com.

Yours very truly,

"Stephen J. Griggs"

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Chief Executive Officer

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