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July 11, 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

The Secretary
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Fax: 416-593-2318
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Anne-Marie Beaudoin
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Re: Canadian Securities Administrators Request for Comments: Proposed NI 62-105 Security Holder Rights Plans, Proposed Companion Policy 62-105CP, and Proposed Consequential Amendments

Dear Sir or Madam,

BlackRock, Inc. ("BlackRock") is pleased to have the opportunity to respond to the Canadian Securities Administrators ("CSA") consultation paper (the "Consultation Paper") on Proposed NI 62-105 Security Holder Rights Plans, Proposed Companion Policy 62-105CP, and Proposed Consequential Amendments (collectively the "Proposed Rule"). We are also submitting comments to the Autorité des marchés financiers (the "AMF") in response to the AMF's consultation letter regarding related provisions of National Policy 62-202 Take-Over Bids – Defensive Tactics ("NP 62-

202"), and we respectfully encourage the CSA to consider whether certain revisions to NP 62-202 would complement the changes considered in the Proposed Rule and thereby provide further protection to investors in Canadian companies.

While we do not support the use of a Rights Plan to prevent shareholders from deciding whether and at what price to sell their shares, we do acknowledge that in certain circumstances it may be reasonable for directors to adopt a Rights Plan to ensure an orderly evaluation of the take-over bid, to provide time to run a sales process, and/or to provide time for the board to educate shareholders as to the board's rationale in opposition or support of a take-over bid. To ensure that shareholders are empowered to protect their own best interests shareholders must be able to either: 1) override the discretion of directors when deemed necessary (e.g., by revoking a Rights Plan); or 2) to ratify the directors' actions by voting in support of a Rights Plan, without concern that a regulator will cease trade the Rights Plan.

We therefore recommend that the Proposed Rule be amended to require a Rights Plan automatically expire 90 days after the announcement of a take-over bid unless the company calls a special meeting of shareholders to ratify the Rights Plan. We believe that 90 days is a reasonable time for both the bidder and the board to make their case to shareholders, and in the board's case to explore and communicate alternatives to the take-over bid. This also enables directors to take affirmative steps to drive shareholder value or explain alternatives in a hostile bid situation, and keeps the hostile bidder engaged for the duration of the 90 day period.

We are concerned that the Proposed Rule does not give sufficient weight to the information gap facing shareholders when they are asked to approve a Rights Plan in the absence of an actual bid. Under the Proposed Rule, shareholders who approve a Rights Plan in the absence of an actual bid may one day rue that decision when a bid acceptable to the shareholder is rejected by the board. Our recommended approach resolves that dilemma by ensuring that shareholders will have the opportunity to determine for themselves whether a specific take-over bid is acceptable. This approach also simplifies the transactional environment by providing certainty to directors and bidders regarding the process by which take-over bids will be considered by shareholders. Regulators will also benefit by avoiding the need to undertake a cease trade analysis of Rights Plans.

We believe that our recommended change to the Proposed Rule will provide meaningful protection to shareholders of Canadian companies, reduce the need for regulatory intervention, and provide an appropriate balance between the interests of shareholders, bidders and management teams.

Below please find responses to some of the specific questions posed in the Consultation Paper.

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?**

   In addition to our recommendation above, we believe that shareholders would benefit if companies are allowed to adopt only standard form Rights Plans that are approved by shareholders either in advance or within 90 days of adoption by the board. Establishment by the CSA of a standard form of Rights Plan that include mandated "permitted bid" provisions would ensure the protection of shareholders by avoiding the complexity of current Rights

Plans, which sometimes contain confusing definitions or otherwise obscure how the Rights Plan is intended to function. The framework for "New Generation" Rights Plans would be a useful starting point for the development of a standard form. However, even New Generation Rights Plans are often excessively complex, and we would encourage development of a streamlined standard form of Rights Plan by the CSA.

In addition to the Proposed Rule, we recommend that the CSA consider whether amendments to NP 62-202 could provide meaningful protections to shareholders. We are concerned that some take-over bids coerce shareholders to tender their shares even to an inferior bid. This coercive effect generally occurs in one of two situations: 1) a bid for only a specific percentage of the company (a "partial bid"); or 2) a bid that closes before all shareholders have had an opportunity to tender. In order to address this coercive effect, we recommend that NP 62-202 be revised to require that: 1) all take-over bids be available for tender by 100% of shares; 2) the bidder publicly announce when 50% of shares have been tendered; and 3) the tender remain open for a minimum of 10 business days following announcement that 50% of shares have been tendered. These three protections should significantly reduce the risk that a shareholder would tender their securities out of fear of being left as a minority shareholder in a controlled company by providing: 1) an equal opportunity to participate in the tender; and 2) sufficient information to make an independent decision about whether to tender their shares. This recommendation is consistent with the AMF's proposal, with the clarification that partial bids should be prohibited.

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?

We believe that 90 days is an appropriate timeframe for voting on a Rights Plan not adopted in the context of a hostile take-over bid. This timeframe should not impose an administrative burden on companies, as they can present the Rights Plan to shareholders as part of their annual shareholder meeting agenda.

(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?

All Rights Plans should be subject to the same standards. As discussed above, we believe that all Rights Plans should be subject to a shareholder vote within 90 days of the commencement of a take-over bid or automatically terminate.

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 that the proposed 90 day period will present a reasonable amount of time for companies to hold a shareholder vote on their Rights Plan without unduly burdening the bidding process.

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?**

   The Proposed Rule should clarify that a Rights Plan will automatically terminate if the issuer does not act to call a shareholder meeting within 90 days of adopting the Rights Plan.

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 year after the issuer first obtained security holder approval. (a) Is this timing appropriate?**

    We agree that annual approval serves the interest of shareholders by providing a regular opportunity to remove the Rights Plan. However, we note that such annual votes would not be necessary if our recommended change to the Proposed Rule is adopted.

    (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?

    No, in the event of a take-over bid, all Rights Plans should be subject to the same 90 day window for shareholder approval. We view advance adoption of a Rights Plan as an administrative convenience for the board, and it should not serve as a barrier to the exercise of the will of shareholders. As described in our comments above, shareholders supporting a Rights Plan in the absence of a take-over bid are acting without insight into the bids that might be put before them, and should have a mechanism for removing any Rights Plan within 90 days following the initiation of a bid.

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?

In our view, it would be appropriate to exclude the management vote for the purposes of approving a Rights Plan regardless of whether a take-over bid has been proposed, as the Rights Plan is intended to protect the interests of shareholders who are not able to directly participate in the negotiation of a takeover bid. Similarly, if a company has a controlling shareholder, it may be appropriate for minority shareholders to have a separate vote.

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?**

    One of the goals of the Proposed Rule is to reduce the frequency of intervention required by securities regulators in the administration of Rights Plans. The provision of the Proposed Rule requiring material amendments to a Rights Plan be submitted to shareholders may create ambiguity requiring additional review by securities regulators. If, as we recommend, the CSA adopts a mandated standard form of Rights Plan, such amendments should not be an issue. If a standard form of Rights Plan is not mandated, we believe that all amendments to a Rights Plan should be subject to shareholder approval.

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?**

    We believe that the Proposed Rule should be revised to facilitate the ability of dissident shareholders or a bidder to challenge a pre-approved Rights Plan. As noted in our recommendation above, we believe that this can be most easily achieved by requiring all Rights Plans to be ratified through a shareholder vote within 90 days of the initiation of a take-over bid. Alternatively, permitting a bidder or dissident shareholder to call a vote on a Rights Plan would also address the risk that a target board could drive away a bidder without considering the preferences of shareholders.

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 believe that there should be an exemption for new reporting issuers. Shareholders at all issuers should have equal protections and it is not clear why the subset of issuers described in Section 5 of the Proposed Rule should be subject to a different standard. We are concerned that the current wording of Section 5 of the Proposed Rule appears to create a permanent exemption from the shareholder protections provided by the Proposed Rule.

We appreciate the opportunity to address and comment on the issues raised by the consultation paper. We are prepared to assist CSA in any way we can, and welcome continued dialogue on these important issues. Please contact us if you have any comments or questions regarding BlackRock's view.

Yours faithfully,

Robert E. Zivnuska
Director
Head of Corporate Governance and
Responsible Investment, Americas

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