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Sent via electronic mail

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

The Secretary
Ontario Securities Commission
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Dear Sirs/Mesdames:

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

Addenda Capital Inc. is a privately owned investment management firm responsible for investing more than $24 billion in assets for pension funds, insurance companies, foundations, endowment funds and third party mutual funds of major financial institutions. On behalf of our clients, we thank you for the opportunity to comment on the Proposed Rule and the Proposed Policy.

General Comments

We are supportive of the Canadian Securities Administrators' efforts to establish a comprehensive regulatory framework for the treatment of security holder rights plans in Canada. This effort should help ensure the equal and fair treatment of all shareholders in the event of a takeover bid and allow a company enough time to consider alternatives to a bid.

Our support is based on these principles:

A. All equivalent shareholders must be treated equally and fairly.
B. Shareholder rights plans are acceptable if they are employed to give a target company a reasonable amount of time to look for an alternative to a bid.
C. Defensive tactics should not unduly restrict the ability of shareholders to respond to a bid (Boards should not be able to block deals that shareholders may want to accept).
D. Shareholder rights plans should not deter takeover bids.
E. Shareholders should be able to decide on the adoption or maintenance of a shareholder rights plan (not a board, regulators or the courts).
F. Shareholders should be able to vote on a shareholder rights plan put in place by a board for tactical reasons in a timely manner.

Question 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 alternatives considered.

Question 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, implementing the Proposed Rule will reduce the need for securities regulators to review Rights Plans through public interest hearings as noted in the *Effect on Securities Regulators* section of the request for comments.

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

Yes, it is possible that the Proposed Rule could have a negative impact on the structure of take-over bids in Canada. The Proposed Rule may discourage some take-over bids because bids may become more time consuming, more expensive and outcomes less certain.

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

Yes, the discretion given to a board of directors under the Proposed Rule is appropriate as they will still owe a fiduciary duty to the corporation and shareholders will have the opportunity to directly decide on the adoption or maintenance of a shareholder rights plan..

Question 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 take-over bids, please explain how you would modify the Rule to address your concerns.*

We believe that the increased leverage of target boards and greater shareholder control over the use of Rights Plans that would result under the Proposed Rule would discourage the making of hostile take-over bids, but not unduly. Despite the potential inhibition of hostile take-over bids, we are still supportive of the Proposed Rule.

Question 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 are not aware of other changes or consequential amendments to applicable securities legislation that would be necessary if the Proposed Rule is implemented.

Question 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?*
> *(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?*

(a) No, the proposed time period of 90 days is too long. Issuers should have less than 90 days to obtain shareholder approval – we propose 70 days. Some consideration should also be given to ensuring that security holder approval is only sought after sufficient disclosure has been provided regarding potential alternatives to a bid.
(b) No, the time period for shareholder approval need not 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.

Question 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.*

This extension of time does not seem reasonable. Canadian market participants have grown accustomed to the 45 to 55 day period and a slight extension to 70 days seems reasonable. The extension of the time to 90 days may have the effect of discouraging hostile take-over bids.

Question 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?*

No, market participants will have a sufficient understanding of what will happen to a Rights Plan at the end of the 90 days (or the lesser time period we would like to see included in the final rule) in the absence of security holder approval.

Question 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?

(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?

(a) Yes, it is appropriate 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.
(b) No, Rights Plans that were adopted in the absence of a proposed take-over bid should be effective for the same period of time as Rights Plans that were adopted in the face of a take-over bid.

Question 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?*

Security holder approval should not exclude any votes cast by any legitimate holder of a security (including management or the potential acquirer).

Question 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?*

The limitation of the Proposed Rule on the effectiveness of rights plans to take-over bids and the acquisition of securities of an issuer by any person does not unduly restrict the potential applications of rights plans.

Question 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?*

Yes, we agree with the application of the Proposed Rule to material amendments to a Rights Plan. Yes, the nature of what may constitute a material amendment should be more fully addressed in the Proposed Rule or the Proposed Policy.

Question 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?*

Yes, the Proposed Rule or Proposed Policy should 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.

Question 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)?*

Yes, this exception should be limited or subject to conditions depending on the manner by which the issuer becomes a reporting issuer or the circumstances of the transaction.

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

Yes, the time period contemplated in this provision is appropriate.

In closing, thank you again for providing us with the opportunity to comment on the Proposed Rule and the Proposed Policy. If you would like to discuss this comment letter, please do not hesitate to contact me at +1 647-253-1029 or b.minns@addenda-capital.com.

Yours sincerely,

Brian Minns

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