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BY E-MAIL

Autorité des marchés financiers
Ontario Securities Commission

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Ladies and Gentlemen:

AMF Consultation Paper: *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* ("AMF Consultation Paper") and CSA proposed National Instrument 62-105 *Security Holder Rights Plans* and related companion policy ("CSA Consultation Paper")

We have reviewed both the AMF Consultation Paper and the CSA Consultation Paper published on March 14, 2013 and we support the AMF'S proposal and are not in favour of the CSA's proposal.

Generally speaking, in past years, several Canadian reporting issuers have been the subject of unfriendly take-over bids and we are of the view that the current regime undermines boards' ability to put in place effective measures to protect issuers against opportunistic attacks.

The CSA 's current interventionist approaches to a board's exercise of its fiduciary duties raises concerns about how boards are regulated in the context of a take-over bid. The CSA should recognize that boards are constrained by their fiduciary duties and by the exercise of shareholder rights, including rights to submit proposals and to appoint new directors.

We believe that allowing shareholders to ratify the board's decision to adopt a rights plan by way of a shareholder vote does not constitute a sufficient hands-off approach. The CSA should allow boards of directors the discretion to act in what they believe to be the best interest of corporations. As well, Regulators should not intervene in the area of take-over bid defences and should leave it entirely up to corporate law and the courts to determine whether defensive measures were taken in accordance with directors' fiduciary duties, as is currently the case in the United States.

1. AMF Consultation Paper

1. *If proper safeguard measures to manage conflicts of interest are put in place and there exists no circumstance that demonstrates an abuse of security holders' rights or a negative impact of the efficiency of capital markets, do you agree that Regulators should give appropriate deference to the decision of target boards to implement a defensive measure?*

We agree that appropriate deference should be given to the decision of target boards to implement defensive measures. Corporate law provides boards with the latitude to determine the appropriate course of action that is in the best interests of the corporation through the application of the business judgment rule, which effectively shields board decisions from second-guessing by the courts absent dishonesty, conflicts or lack of due diligence.

The decision to sell or not to sell a corporation is part of a business strategy and it should be left to the board to determine how a take-over bid fits into a corporation's long-term strategy, and evaluate which stakeholder interests should prevail.

2. *Do you think giving appropriate deference to directors in the exercise of their fiduciary duty will negatively impact the ability of target security holders to tender their securities to an unsolicited take-over bid?*

Giving greater deference to the target board to set up defensive measures in the exercise of their fiduciary duty may well limit the ability of target shareholders to tender their securities in the context of a hostile take-over bid. However, this fact alone should not be necessarily viewed as being negative and should not warrant restricting deference to the board in such a context.

A board's decision to take defensive measures may be otherwise beneficial for other corporate stakeholders and the target corporation's long-term interests. Boards have a fiduciary duty to act in the best interests of the corporation, which includes but is not limited to shareholders' short-term interests.

Furthermore, recourses are available to shareholders who are dissatisfied with a board's decision to take defensive measures in the face of an unsolicited take-over bid. They always have the opportunity of removing board members at the corporation's annual general meeting or after calling a special meeting at any time. They may launch a proxy fight and present an alternative slate of directors favourable to removing defensive measures. In addition, dissatisfied shareholders have the option of selling their shares in the market.

3. *Should directors, in the exercise of their fiduciary duty, be able to implement a rights plan or any other defensive measure to fend off an unsolicited take-over bid?*

Directors should be able to implement a rights plan or any other defensive measure to defend the corporation from a hostile take-over bid.

The current regime does not allow issuers to defend themselves effectively against opportunistic and value-destroying bids, and forces issuers that are "in play" to auction off the corporation to the highest bidder. Giving boards the power to implement defensive measures would place Canadian issuers on a level playing field with the United States, where boards have greater latitude to implement defensive measures within the scope of their fiduciary duties.

4. *Is it appropriate for Regulators to provide guidance as to appropriate safeguard measures generally recognized as effective in mitigating the inherent conflicts of interest of directors facing an unsolicited take-over bid?*

We believe that it is important for Regulators to provide such guidance, in order to facilitate compliance and allow issuers to comprehend the circumstances under which a Regulator could intervene.

If you agree, are you of the view that these measures should be in a policy or in a rule?

We are of the view that such measures should be in the form of a policy, in order to ensure greater flexibility and allow the specifics of each case to be taken into account.

5. *Do you have any suggestions of effective measures to manage conflicts of interest of directors?*

We consider that the examples listed on page 15 of the AMF Consultation Paper are appropriate for managing conflicts of interest of directors in the context of a take-over bid. These measures reflect current best practices.

6. *Do you believe that security holders generally have the appropriate tools to discipline directors?*

Security holders generally do have the appropriate tools to discipline directors. They have the power to change the composition of the board at any time. The increasing use of majority voting among Canadian issuers provides them with a say in electing directors. They may also take legal action against directors or the issuer for breach of fiduciary duty, class actions, oppression remedies and derivative actions. They have the power to convene meetings, submit proposals and solicit proxies in relation to any matter properly put before a meeting. These disciplinary measures act as an effective safeguard against the possibility of director entrenchment and other conflicts of interest in the context of a take-over bid.

7. *Do you agree that our proposed changes to the take-over bid regime to add the irrevocable minimum tender condition and the extension of the bid would contribute to allow target security holders to make a voluntary, undistorted collective decision to sell?*

We generally agree that adding an irrevocable minimum tender condition and extending the bid by ten days once this threshold is reached would contribute to allowing target shareholders to make a voluntary, undistorted collective decision to sell.

8. *Do you believe that the AMF Proposal would enhance investor protection against unfair, improper or fraudulent practices and promote the efficiency of capital markets?*

The AMF Proposal would enhance the efficiency of capital markets by limiting regulatory intervention, correcting current regulatory imbalances that unduly favour bidders and allow boards to prevent the completion of value-destroying bids.

9. *Are there other amendments to address gaps in our take-over bid regime that we should contemplate?*

We believe that the AMF's Proposal provides the appropriate answers to current gaps.

2. CSA 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?*

We are not in favour of the proposals described in the CSA Consultation Paper (the **Proposed Rule**). Although preferable to the status quo, it is unsatisfactory as it suggests undue shareholder interference with legitimate board decisions, undermining the authority of the board and preventing the board from discharging its fiduciary obligations vis-à-vis its stakeholders.

Amending the bid regime to mandate "permitted bid" conditions and disallow Rights Plans would further limit the board's ability to implement a rights plan. We remain of the view that it is crucial that directors have the authority to implement a rights plan in accordance with their fiduciary duties.

The last alternative, which is to amend NP 62-202 to provide specific guidance on when securities regulatory authorities would intervene on public interest grounds to cease trade a rights plan, is acceptable to the extent that such guidance would provide more clarity and business certainty with regard to the validity of a rights plan. We would hope that it would leave the board sufficient latitude to decide whether or not to implement a rights plan, and reduce regulatory intervention to a minimum.

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.*

Although we are not in favour of the Proposed Rule, we believe that it should normally reduce the need for securities regulators to review Rights Plans as the decision to implement, amend or maintain a rights plan would essentially be in the shareholders' hands.

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

We have no comment.

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

The Proposed Rule unduly restricts boards' discretion in adopting a rights plan by subjecting their decision to shareholder approval.

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?

Although we are not in favour of the Proposed Rule, we do not believe that it would unduly discourage the making of hostile take-over bids. American boards have had the authority to adopt rights plans for decades now, and hostile bids still occur routinely. The Proposed Rule would just provide greater leverage to the target board, for a limited period of time only, in its negotiations with a bidder.

If you believe hostile take-over bids will be inhibited, please explain whether or not you support that impact or have concerns.

[Not applicable.]

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.

[Not applicable.]

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.

If the Proposed Rule were to be implemented, we would suggest adopting a 50% irrevocable minimum tender condition and a 10-day extension of the bid once this threshold is reached, as put forward in the AMF Proposal. Such addition would be useful where a rights plan has not been adopted by the board or approved by the shareholders. It would allow target shareholders to make a voluntary, undistorted collective decision to sell.

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?

As previously mentioned, we are of the view that rights plans should not be subject to shareholder approval.

If the Proposed Rule were to be adopted, we are of the view that 90 days is a minimum period of time for a rights plan to be submitted to shareholders' approval. The board and its shareholders require time to adequately

assess the situation and consider what is at stake. The proposed 90 day minimum represents an improvement compared with the current period after which a rights plan is typically cease traded.

(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?

If the Proposed Rule were to be adopted, we do not consider that different time periods are warranted.

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.*

Please refer to our comments in response to question 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?*

We are not in favour of the Proposed Rule and do not agree with subjecting the adoption of a rights plan to shareholder approval. Therefore, we do not believe that provisions should be added to account for the situation where a board has not taken steps to call shareholders' meeting 90 days after a rights plan is adopted.

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 support the Proposed Rule, as shareholders should not have the ultimate say on the implementation and the maintenance of a rights plan. This decision should be left exclusively to the board.

If the Proposed Rule were to be adopted, we would suggest that shareholder approval of a rights plan be effected every three years. Yearly voting on a rights plan would unnecessarily put shareholders in constant soul-searching mode. It would discourage boards from adopting rights plans annually in favour of tactical rights plans.

(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?

We are of the view that the same rules should apply.

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.*

If the Proposed Rule were to be adopted, we believe that this measure would be appropriate. There should be no discrimination between shareholders of the issuer, with the exception of the bidder. Furthermore, it is important to note that it is considered a corporate governance best practice for management to hold shares of an issuer in order to align management's interest with that of shareholders.

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?

No, the previous answer applies in all situations.

Would you like to see any other voting issues addressed?

We are of the view that the proxy voting system could be improved, in order to further enhance the effectiveness of the exercise of shareholder rights. The current system is overly complicated. Tracking of administrative or technological errors is difficult given that there are various parties involved and no system of interaction has been properly established. Proxy agents are unregulated and it is almost impossible for investors to verify how their voting instructions were handled with regard to a particular meeting. The system also allows for empty voting, which gives a voice to individuals that wish to further a personal agenda often unrelated to an issuer's best interests.

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?

We do not believe that this limitation unduly restricts the potential applications of rights plans. Under normal circumstances, rights plans are never actually triggered and only serve as a tool for directors to find better alternatives, gain time and repel undesirable bidders.

Should rights plans be permitted to be effective against irrevocable lock-up agreements?

We believe that rights plans should be effective against irrevocable lock-up agreements, in order to give rights plans their full defensive effect and prevent bidders from circumventing a board's defensive measures. Boards' decisions to implement rights plans should prevail over shareholders' decisions to enter into lock-up agreements with a bidder. The board is better suited to evaluate an offer in the context of an issuer's long-term corporate strategy and to take into account the interests of all relevant corporate stakeholders. Such authority would be undermined by allowing irrevocable lock-up agreements to stand against a rights plan that was legitimately adopted by a board.

13. Do you agree with the application of the Proposed Rule to material amendments to a Rights Plan?

We do not believe that shareholders should have the ultimate say with regard to the amendment of a rights plan. This decision should be left exclusively to the board, as should the decision to implement and maintain 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?

If the Proposed Rule were to be adopted, further guidance on the nature of what may constitute a material amendment would certainly be useful. It would allow issuers to be more fully informed of their duties and facilitate compliance with the regulation.

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?

The Proposed Rule or Proposed Policy should not facilitate the ability of dissident shareholders or a bidder to challenge a pre-approved Rights Plan. The Proposed Rule should not duplicate or provide additional rights to dissident shareholders than those they are already granted under corporate law.

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 support the Proposed Rule, and believe that no issuer should have to submit its rights plan to shareholder approval.

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

As we do not support the Proposed Rule, we do not wish to comment on this question.

Conclusion

To summarize, we believe that the AMF's proposal is more favorable than CSA's proposal. The CSA proposal focuses on shareholder sovereignty that is uncalled for in light of fundamental principles of corporate law. It is also restricted in scope, as it only concerns rights plans. Conversely, the AMF proposal offers a comprehensive plan to address current regulatory imbalances with regard to defensive measures, while recognizing the legitimate authority of the board, thereby realigning securities law with core principles of corporate law.

We thank you for affording us an opportunity to provide our comments.

Yours truly,

(*s) Louise Paul*

Assistant Corporate Secretary
Cascades Inc.