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VIA EMAIL

July 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

Delivered to:

The Secretary
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Dear Sirs/Mesdames:

RE: CSA Notice and Request for Comment – Proposed National Instrument 62-105 Security Holder Rights Plans, Proposed Companion Policy 62-105CP Security Holder Rights Plans and Proposed Consequential Amendments

We are writing this letter on behalf of the National Securities and Capital Markets practice group of Borden Ladner Gervais LLP. As such, we are pleased to provide the Canadian Securities Administrators (CSA) with this letter on the above-noted proposed new National Policy 62-105, which would regulate security holder rights plans ("**rights plans**") and clarify the approach to be taken by the Canadian securities commissions. We note as well that on March 14, 2013, the Autorité des marchés financiers released a consultation paper (the "**AMF Paper**") in which it

proposed an alternative approach for regulators to take in dealing with rights plans, take-over bids and defensive tactics in general.

Our comments do not necessarily represent the views of other lawyers, the firm or our clients, although we have incorporated general feedback received to date from our clients into this letter. Our comments are also based on our experience in working with our clients, and with various members of the CSA in connection with take-over bids and hearings relating to rights plans.

General Comment – Available Alternatives

We commend the CSA for proposing new rules in an effort to create a more uniform approach to dealing with rights plans. We believe that if new rules are adopted, the CSA should adopt a clear and more consistent approach across Canada with respect to rights plans to ensure greater certainty to investors.

In addition to the status quo and the proposal made by the CSA, the AMF recently published the AMF Paper in which it proposed a third way, which is much more in line with the US approach to rights plans and take-over bids. The AMF Paper proposes to treat rights plans like other corporate matters. More specifically, boards could rely on the business judgment rule to implement, and/or apply, a rights plan, and shareholders could challenge such decisions in court on the basis of, among other things, fiduciary duties.

The CSA and AMF approaches, as well as the status quo, represent very different approaches to rights plans. We see both benefits and potential issues with each of these approaches. Whatever approach is ultimately adopted will likely have a significant impact on take-over bids in Canada, which could greatly impact our capital markets. Accordingly, we recommend that the CSA engage in further discussions among themselves and with market participants such as issuers, investors, and financial and legal advisors before coming to a decision. Finally, as noted above, we strongly believe that if rules are adopted, such rules should be adopted in a uniform manner throughout Canada.

Status Quo

We agree with the CSA that the current take-over bid regime in Canada is very bidder friendly, much more so than in many other jurisdictions. While, we generally favour giving boards more power to deal with hostile take-over bids where directors are fulfilling their fiduciary duties, we note that some of our investor clients favour the status quo and do not support any changes to the current take-over bid and rights plan regime. As such, we believe that one option for the CSA to consider is not to make any changes to the current take-over bid, and rights plan, regimes.

The CSA Proposal

With respect to the CSA approach, we favour an approach where commissions are not routinely being tasked with making decisions at “poison pill” hearings. We further agree that, in theory, having shareholders decide such matters makes sense. However, our primary concerns with the current approach are (i) is it appropriate to ultimately defer to shareholders and not boards on rights plan – would this approach be consistent with the Supreme Court’s decision in BCE, and

(ii) if so, there are issues with shareholder meetings and our voting system generally. In particular, shareholder meetings can be very expensive and time consuming and security holder participation can be low (particularly where shares are held by retail securityholders). Furthermore, once a corporation becomes the target of a take-over bid, there can be a significant shift in the composition of the security holder base as a result of arbitrage opportunities with the result that those that actually vote may not have the long term interests of the corporation in mind. In addition, in our experience, a securityholder vote does not necessarily reflect the views of a majority of the actual securityholders of the target. We also note that many issuers have raised concerns regarding the growing role and influence that proxy advisory firms play in corporate and governance matters put before shareholders. The Proposed Rule could increase the influence that these proxy advisory firms play with respect to take-over bids and rights plans. If the CSA does follow the approach set out in the proposed rule, then our comments to such proposal are set out below.

AMF Proposal

With respect to the AMF Paper, we see benefits in leaving decisions up to boards and leaving shareholders with the ability to petition the courts if they feel that a board has not acted properly. Two significant concerns with this approach are (i) whether the courts will be able to react quickly given the time sensitive nature of take-over bids, and (ii) whether this will lead to increased litigation not only with respect to rights plans, but with respect to take-over bids generally.

Responses to Questions Raised by the CSA

The following numbered responses correspond to the questions set out in the CSA's Request for Comments though our responses below are all subject to the overriding, general comments made above.

General

1. We believe that it is important for bidders, issuers and shareholders to rely on a consistent, uniform approach to rights plans across Canada. As such, we support the CSA's attempt to adopt a common set of rules.

   Further, we believe that the Proposed Rule is preferable to simply providing guidance on when securities regulators would intervene on public interest grounds as it will likely be difficult to be overly specific in such regard, which will not alleviate the current uncertainty or inconsistency among commissions.

2. We believe that the Proposed Rule will reduce the need for securities regulators to review rights plans as shareholders will be asked to vote on plans, and such vote will dictate whether such plans should remain in effect or not.

3. We do not believe that there would be any significant negative effects on the structure of take-over bids in Canada though do see potential for some changes. First, hostile bidders may be more reluctant to make bids knowing that an issuer can delay the bid for 90 days

while it seeks shareholder approval of a rights plan and then such plan may remain in effect indefinitely if approved by shareholders. Second, since hostile bidders may need to solicit shareholders to vote against shareholder rights plans, we will likely see hostile bids combined with proxy fights. Bidders that commence such proxy fights will likely seek to remove the board at the same time that they seek to terminate the rights plan. This could lead to an increase in proxy fights with the result that there could be an increase in the number of times that a bidder is able to gain effective control of a company without having paid any premium.

4. We believe that a board of directors should have more control over the process than currently provided to them. Consideration should be given as to whether directors should be given the same discretion and deference in the context of rights plans as is generally afforded to them under the "business judgment rule" in the context of other corporate decisions as is proposed by the AMF Paper. Shareholders that disagree with decisions or actions of boards, have a variety of alternatives, including bringing a lawsuit to challenge a decision or action taken by a board or calling a meeting to remove the board (if they own alone, or together with a group of other shareholders, at least 5% of the company).

5. We do not believe that the Proposed Rule would unduly discourage hostile bids. As noted above, while the Proposed Rule may make a bidder consider its options, a bidder that makes, or believes it is making, a reasonable offer for a target should not be discouraged as shareholders would ultimately get to decide whether to terminate a rights plan and thereafter tender to the bid.

6. We do not have any other suggestions.

Specific

7. (a) We believe that 90 days may be too long, particularly where the plan is put in place in the face of a take-over bid. In the past, rights plans were typically allowed to be kept in place for 45-55 days. Further, while not too common, when issuers negotiate go-shop provisions in friendly deals, it is very rare to see a go-shop period of longer than 60 days. This suggests that issuers believe that they can complete a market check within 60 days. We would suggest providing somewhere between 60-75 days.

   (b) We believe that 90 days (or our proposed shortened period of 60-75 days) suffices for an issuer to call and hold a meeting, and therefore we believe it is an appropriate period of time to require an issuer to seek approval of a rights plan regardless of whether the plan was adopted in the face of a bid or not.

8. We do not believe that the extra time will have a significant effect on the willingness of hostile bidders to make bids nor will it add too much to the time it typically takes to complete a hostile bid. However, as noted above, we think that 90 days is a bit longer than necessary.

9. Given that one of the primary purposes of the Proposed Rule is to let shareholders decide whether to approve a rights plan, we believe that boards should not get the benefit of the

full 90 days if they do not intend to put the plan before shareholders. Given that a meeting must be called, and materials sent, roughly 30 days prior to the meeting date, we suggest that if an issuer has not called a meeting and sent the relevant materials to shareholders by day 60, the rights plan should cease to be effective on the 60th day rather than on the 90th.

10. (a) We believe that it is appropriate to have an annual reapproval. To require otherwise would result in unnecessary expenses and management distraction.

    (b) Some consideration should be given as to whether issuers that adopt plans in the face of a take-over bid should be required to give shareholders the option to approve a plan with respect to just a specific take-over bid or in general to remain in effect until the next annual meeting.

11. We believe that management should be able to include their votes regardless of whether a rights plan is proposed in the face of a take-over bid or not. In either case, the decision to implement a rights plan should be made, or at least approved, by the board, not management. Second, where management owns a small percentage of the target, their votes are not likely to have a meaningful effect on the outcome of a vote and where they have a significant shareholding, their bias (if there was one at all) would be to decide what they believe is best from the view point of a shareholder, which is consistent with what other shareholders will do when voting.

12. We do not believe that this limitation unduly restricts rights plans. Given that the Proposed Rule defers to shareholders, it would be inconsistent to allow a board to prevent a shareholder from entering into a hard lock-up.

13. Yes, we believe that the rules should apply to material amendments to rights plans. We also believe that it would be helpful to give some guidance or guidelines as to what would constitute a material amendment to a rights plan.

14. See above.

15. We agree with this exemption. The IPO market will decide whether such an approach is acceptable.

16. We believe that the transition provided for in Section 10(1) may lead to many issuers adopting rights plans shortly before the adoption of the Proposed Rule. We suggest that any plan approved prior to the adoption of the new rules may remain in effect until the earlier of (i) the next annual meeting, and (ii) 90 days following the date that a take-over bid is made or announced.

Thank you for considering our comments. Please contact either Jason Saltzman (416.367.6196, jsaltzman@blg.com) or Pascal de Guise (514.954.3167, pdeguise@blg.com) if you have any questions about our comments or you would like to meet with us to discuss them.

Yours very truly,

"Borden Ladner Gervais LLP"

National Securities and Capital Markets Group