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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

To the attention of:

Mtre Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Ladies and Gentlemen:

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

This submission is made by the Public Sector Pension Investment Board (PSP Investments) in response to the CSA Consultation Paper and the AMF Consultation Paper, both published on March 14, 2013.

By way of background, PSP Investments is a Canadian Crown corporation established to invest the amounts transferred by the Government of Canada since April 1, 2000, for the pension plans of the Public Service, the Canadian Forces and the Royal Canadian Mounted Police, and since March 1, 2007, for the Reserve Force Pension Plan. To achieve its investment mandate, PSP Investments makes investments

in public and private assets. As at March 31, 2012, PSP Investments' assets under management were worth over \$64.5 billion. As at June 30, 2013, PSP Investments was an investor in over 2,800 public companies including over 300 companies listed on the Toronto Stock Exchange.

General

PSP Investments follows closely developments in corporate and securities law and practice. In recent years, there has been significant uncertainty regarding the manner in which Canadian securities regulators may intervene to regulate the operation of security holder rights plans (Rights Plans). PSP Investments believes that initiatives to minimize this uncertainty in the Canadian securities regulatory landscape would be desirable and, as such, is generally supportive of the initiatives set forth in the CSA Consultation Paper. PSP Investments is of the view that providing clarity in the application of rules as they relate to Rights Plans is desirable and is firmly of the view that shareholders of a corporation, as owners, are ultimately best placed to determine what is in their best interests. PSP Investments supports two of the proposals in the AMF Consultation Paper dealing with changes to the regulatory regime applicable to take-over bids (i) to require a minimum tender condition of 50% +1 and (ii) to extend the bid period by ten days following reaching the mandatory minimum tender condition.

PSP Investments believes that the CSA Proposal generally establishes an appropriate balance between the rights of shareholders and the duties of boards of directors in that directors, in discharging their fiduciary duties, are empowered to adopt Rights Plans as they see fit, subject to the ultimate approval of the shareholders. Although the proposals set forth in the CSA Consultation Paper may have an impact on the structure and timing of certain take-over bids, these effects are not necessarily undesirable in that they enhance shareholder approval with respect to the process and may operate to reduce the influence of shareholders with a very short term vision. PSP Investments believes, however, that the rights of shareholders in respect of transactions of the nature addressed by the CSA Proposal should be enshrined more clearly in the CSA Proposal. More specifically, PSP Investments is concerned that in situations where an unsolicited offer is made to shareholders of an issuer that has in place a Rights Plan which had been approved by shareholders, significant uncertainty will be created in the market as a result of the existence of the Rights Plan and no certain path as to how or when shareholders will have a right to express themselves in respect of the unsolicited offer. PSP Investments is concerned that the uncertainty thus created will create opportunities for opportunistic investors which may not be beneficial to the market as a whole. While PSP Investments understands that a hostile bidder may be inclined to convene a shareholders' meeting for the purpose of terminating a Rights Plan or replacing a board of directors (assuming they may do so under corporate laws), there is no certainty that a hostile bidder will do so and if so, on what terms and when. We believe it would be preferable to create a regime where an issuer is required to seek shareholder approval at a meeting called within 90 days (for example) of the commencement of an unsolicited proposal. The CSA could consider requiring shareholders to reapprove Rights Plans every three years and, in any event, at a meeting called within 90 days of the commencement of a hostile offer. So doing would minimize the frequency with which an issuer must consult shareholders on the issue of a Rights Plan while giving shareholders ultimate and timely approval rights which are expected to be held by them.

PSP Investments' shareholder focussed position in respect of Rights Plans is consistent with the view expressed in PSP Investments' letters to the OSC dated May 22, 2012, and May 27, 2013, relating to the proxy voting system and takes this opportunity to strongly encourage the CSA to rapidly move forward on a meaningful and fundamental review of the proxy voting system to ensure that shareholder votes are properly tabulated such that each shareholder vote counts (and counts only once). In this regard, PSP Investments was encouraged to see the recently published OSC Notice 11-768 – *Notice of Statement of Priorities for Financial Year to End March 31, 2014* which gives prominence to issues surrounding proxy voting.

1. CSA Consultation Paper

You will find below comments on each question set forth in the CSA Consultation Paper.

General

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?*

PSP Investments generally supports the Proposed Rule and believes it is better than the status quo in that it reduces regulatory intervention, and clarifies the weight that will be given to a shareholder vote with regard to a Rights Plan. We believe it strikes an appropriate balance between the exercise by a board of its fiduciary duties and the rights of shareholders, as owners of the corporate entity, to assess what is in their best interests. As noted in the introduction above, however, PSP Investments believes the CSA Proposals should require a shareholder vote at a meeting called within 90 days of the commencement of a hostile offer in order to minimize market uncertainty and provide the market with a clear indication of how shareholders will be able to express their views on the hostile offer.

We would also support proposals 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. Such guidance would provide more clarity and business certainty with regard to the validity of a Rights Plan.

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. We believe the Proposed Rule establishes a code of conduct with respect to Rights Plans that should reduce in a meaningful way instances where securities regulators will be called upon to review Rights Plans. In addition, PSP Investments is of the view that securities regulators have developed the necessary expertise, over the years, to be the appropriate forum to review and assess Rights Plan in a relatively quick and efficient process and would not be in favour of having this role assumed by courts.

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

While the Proposed Rule could affect the timing of take-over bids, we believe any such negative impact is offset by the benefits of having greater certainty with respect to the regulatory review of Rights Plans. We reiterate our comment above, however, encouraging the requirement for a shareholder vote at a meeting called within 90 days of the commencement of a hostile bid in order to minimize market uncertainty and disruption.

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

We believe the Proposed Rule, as adapted in the manner described in this letter, establishes an appropriate balance between the boards' discretion in adopting a Rights Plan and the ultimate approval to be exercised by shareholders, as owners of a corporation, in respect of fundamental changes involving the corporate entity.

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?*

We do not believe so.

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.*

We believe the 50% irrevocable minimum tender condition and 10-day bid extension once this threshold is reached, as put forward in the AMF Proposal, would be desirable changes to the take-over bid regime.

Specific

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 the 90 day period is appropriate and gives the board and its shareholders time to adequately assess a proposed offer.

(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?

As noted above, PSP Investments believes that shareholders should be consulted on a regular basis in the event a Rights Plan is proposed (e.g. at inception and, potentially up to every three years thereafter) and re-consulted a meeting called within 90 days of the commencement of an unsolicited take-over bid.

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 the comments for 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?

PSP Investments believes that it would not be appropriate to prescribe a code of conduct in situations where a target board does not call a shareholders meeting after a Rights Plan has been adopted. There may be instances where a board of directors has concluded that convening a shareholders meeting is not desirable (for example, situations where a target is in negotiations with a potential acquirer). Without establishing a formal rule, guidance on this topic may be included in NP 62-202.

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?

Rights Plans are intended to address fundamental changes in the corporate entity. PSP Investments believes that shareholders should have the ultimate say on the implementation and the maintaining of a rights plan and finds the annual reapproval proposal desirable subject, however, to the discussion above contemplating shareholder approval at a meeting called within 90 days of the commencement of an unsolicited offer.

(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?

PSP Investments is of the view that the same rules should apply, i.e. that Rights Plans should be effective to the extent they have received a favourable vote of shareholders.

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.*

PSP Investments does not see any reason in principle to disenfranchise management in respect of votes relating to the approval of a Rights Plan.

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.

Would you like to see any other voting issues addressed?

No.

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?*

No comment.

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

Yes.

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

Consistent with PSP Investments' view that shareholders should ultimately approve Rights Plans, we 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. Additional guidance would assist practitioners in their interpretation of the Proposed Rule.

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?*

No comment.

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)?*

No comment.

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

No comment.

2. AMF Consultation Paper

As discussed above, PSP Investments is of the view that shareholders should have ultimate approval rights over fundamental changes involving a corporate entity. As such, we do not provide detailed comments on the AMF Consultation Paper. However, PSP Investments believes the AMF Consultation Paper has encouraged a meaningful debate on the question of defensive measures generally and Rights Plans and commends the AMF for its efforts in this regard. In addition, as indicated above, PSP Investments supports only two of the proposals in the AMF Consultation Paper dealing with changes to the regulatory regime applicable to take-over bids (i) to require a minimum tender condition of 50% +1 and (ii) to extend the bid period by ten days following reaching the mandatory minimum tender condition as so doing would allow security holders of a target company subject to a take-over bid to have the ability to make a voluntary, undistorted collective decision to sell.

Conclusion

We appreciate this opportunity to comment on the Consultation Paper. Please do not hesitate to contact the undersigned if you wish to discuss any aspect of this letter in further details,

Sincerely,

A handwritten signature in black ink that reads "Stéphanie Lachance". The signature is written in a cursive, flowing style.

Stéphanie Lachance
Vice President, Responsible Investment and
Corporate Secretary