Addenda Capital

36 | Toronto Street
Suite 1050
Toronto (Ontario) M5C 2C5
t 416-943-1010 | f 416-955-0808
addenda-capital.com

July 12, 2013

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
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, NunavutMichal Pomotov

c/o

Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: Proposed amendments and changes to the early warning reporting regime in Canada, including to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* and National Policy 62-203 *Take-Over Bids and Issuer Bids* published for comment on March 13, 2013

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 amendments and changes to the early warning reporting regime in Canada (the "Amendments").

General Comments

We are supportive of the Canadian Securities Administrators' efforts to provide greater market transparency and investor confidence. Enhanced early warning reporting about significant holdings of issuers' securities will help market participants review and assess the potential impact of changes in the ownership of, or control or direction over, a reporting issuer's voting or equity securities.

Question 1. *Do you agree with our proposal to maintain the requirement for further reporting at 2% or should we require further reporting at 1%? Please explain why or why not.*

Yes, we agree with your proposal to maintain the requirement for further reporting at 2% because there does not appear to be empirical evidence supporting the lowering of the threshold.

Question 2. *A person cannot acquire further securities for a period beginning at the date of acquisition until one business day after the filing of the report. This trading moratorium is not applicable to acquisitions that result in the person acquiring beneficial ownership of, or control or direction over, 20% or more of the voting or equity securities on the basis that the take-over bid provisions are applicable at the 20% level.*

The proposed decrease to the early warning reporting threshold would result in the moratorium applying at the 5% ownership threshold. We believe that the purpose of the moratorium is still valid at the 5% level because the market should be alerted of the acquisition before the acquiror is permitted to make additional purchases.

> *(a) Do you agree with our proposal to apply the moratorium provisions at the 5% level or do you believe that the moratorium should not be applicable between the 5% and 10% ownership levels? Please explain your views.*
> *(b) The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.*
> *(c) Do you think that a moratorium is effective? Is the exception at the 20% threshold justified? Please explain why or why not.*

(a) Yes, we agree with your proposal to apply the moratorium provisions at the 5% level as this may lead to greater market efficiency by giving market participants some time to react to changes in significant holdings of issuers' securities.
(b) Yes, the moratorium provisions should apply to acquisitions of "equity equivalent derivatives". If "equity equivalent derivatives" are to be included in the early warning calculation than they should be included in the calculation for the moratorium provisions too.
(c) Yes, a moratorium appears to be effective at promoting greater market efficiency because it gives market participants some time to react to changes in significant holdings of issuers' securities.

Question 3. *We currently recognize that accelerated reporting is necessary if securities are acquired during a take-over bid by requiring a news release at the 5% threshold to be filed before the opening of trading on the next business day.*
With the Proposed Amendments to the early warning reporting threshold, we do not propose to further accelerate early warning reporting during a take-over bid.

> *(a) Do you agree? Please explain why or why not.*

(b) If you disagree, how should we accelerate reporting of transactions during a take-over bid? Should we decrease the threshold for reporting changes from 2% to 1%? Or do you think that requiring early warning reporting at the 3% level is a more appropriate manner to accelerate disclosure? Please explain your views.

(a) Yes, we agree that further acceleration of early warning reporting during a take-over bid is not necessary as the 5% threshold should be sufficient and is consistent with other proposed amendments.

Question 4. *The Proposed Amendments would apply to all acquirors including EIIs.*
(a) Should the proposed early warning threshold of 5% apply to EIIs reporting under the AMR system provided in Part 4 of NI 62-103? Please explain why or why not.
(b) Please describe any significant burden for these investors or potential benefits for our capital markets if we require EIIs to report at the 5% level.

(a) Yes, the proposed early warning threshold of 5% should apply to EIIs reporting under the AMR system provided in Part 4 of NI 62-103 in order to maintain consistency with the other proposed amendments.
(b) Potential benefits for our capital markets if we require EIIs to report at the 5% level include greater transparency which could lead to more informed investors and hence a more efficient market.

Question 5. *Mutual funds that are reporting issuers are not EIIs as defined in NI 62-103 and are therefore subject to the general early warning requirements in MI 62-104. Are there any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% or does the burden of reporting at 5% outweigh the potential benefits? Please explain why or why not.*

There do not appear to be any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% as long as the EII that manages the mutual fund is subject to the early warning disclosure requirements and the calculation with regard to disclosure requirements includes the total number of securities over which it exercises discretion to vote, acquire or dispose such securities without the express consent of the beneficial owner.

Question 6. *As explained above, we propose to amend the calculation of the threshold for filing early warning reports so that an investor would need to include within the early warning calculation certain equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. These provisions would only capture derivatives that substantially replicate the economic consequences of ownership and would not capture partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). Do you agree with this approach? If not, how should we deal with partial-exposure instruments?*

No, we do not agree with the exclusion of partial-exposure instruments from the calculation with regard to disclosure requirements because, as noted in the request for comments, "sophisticated investors may be able to use derivatives to accumulate substantial economic positions in public companies without public disclosure (this is referred to as "hidden ownership")". Hidden ownership would appear to be possible through the use of partial-exposure instruments as well as those defined as "equity

equivalent derivatives". However, dealing with partial-exposure instruments may require a complex reporting regime and the costs and benefits of such a regime should be carefully considered.

Question 7. *We propose changes to NP 62-203 in relation to the definition of equity equivalent derivative to explain when we would consider a derivative to substantially replicate the economic consequences of ownership of the reference securities. Do you agree with the approach we propose?*

No, please see our response to Question 6 above. In addition, "equity equivalent derivative" should be defined in terms of its intent and economic outcome rather than by referencing how a market participant taking "a short position on the derivative could substantially hedge its obligations under the derivative". Also, how would a derivative that derives its value from the price of more than one underlying security be treated?

Question 8. *Do you agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving the securities of the reporting issuer? Are these the appropriate circumstances to disqualify an EII? Please explain, or if you disagree, please suggest alternative circumstances.*

Yes, we agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving the securities of the reporting issuer. Yes, adding this circumstance to the two circumstances currently listed in Section 4.2 is appropriate as this will help address the policy intent of the regime.

Question 9. *We propose to exempt from early warning requirements acquirors that are lenders in securities lending arrangements and that meet certain conditions. Do you agree with this proposal? Please explain why or why not.*

No, we do not agree with your proposal to exempt "lenders from the early warning reporting trigger for securities transferred or lent pursuant to 'specified securities lending arrangements'" because these lenders would appear to be able to accumulate a total potential position in a security greater than 5% by buying the security and lending it while still retaining the right to recall the securities before a meeting of securityholders.

Question 10. *Do you agree with the proposed definition of "specified securities lending arrangement"? If not, what changes would you suggest?*

Yes, in general, we agree with the proposed definition of "specified securities lending arrangement". The only changes we would suggest would be to loosen the definition a bit to preclude market participants from making small contractual changes to avoid having their agreements deemed to be "specified securities lending arrangement".

Question 11. *We are not proposing at this time an exemption for persons that borrow securities under securities lending arrangements as we believe securities borrowing may give rise to empty voting situations for which disclosure should be prescribed under our early warning disclosure regime. Do you agree with this view? If not, why not?*

Yes, we agree with the view that securities borrowing may give rise to empty voting situations for which disclosure should be prescribed under the early warning disclosure regime.

Question 12. *Do the proposed changes to the early warning framework adequately address transparency concerns over securities lending transactions? If not, what other amendments should be made to address these concerns?*

Yes, the proposed changes to the early warning framework adequately address transparency concerns over securities lending transactions except as noted in our response to questions 9 and 10.

Question 13. *Do you agree with our proposal to apply the Proposed Amendments to all reporting issuers including venture issuers? Please explain why or why not. Do you think that only some and not all of the Proposed Amendments should apply to venture issuers? If so, which ones and why?*

Yes, we agree with your proposal to apply the Amendments to all reporting issuers including venture issuers.

Question 14. *Some parties to equity equivalent derivatives may have acquired such derivatives for reasons other than acquiring the referenced securities at a future date. For example, some parties to these derivatives may wish to maintain solely an economic equivalency to the securities without acquiring the referenced securities for tax purposes or other reasons. Would the proposed requirement lead to over-reporting of total return swaps and other equity equivalent derivatives? Or would the possible over-reporting be mitigated by the fact that it is likely that parties to equity equivalent derivatives would qualify under the AMR regime?*

It seems likely that the possible over-reporting would be mitigated by the fact that it is likely that parties to equity equivalent derivatives would qualify under the AMR regime.

Question 15. *If the proposed new requirement does lead to an over-reporting of these derivatives, is this rectified by the requirement in the early warning report for acquirors to explain the purpose of their acquisition and thereby clarify that they do not intend to acquire the referenced securities upon termination of the swap?*

It seems likely that if there is over-reporting of derivatives, it will be rectified by the requirement in the early warning report for acquirors to explain the purpose of their acquisition and thereby clarify that they do not intend to acquire the referenced securities upon termination of the swap

In closing, thank you again for providing us with the opportunity to comment on the proposed amendments. 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
Sustainable Investment Specialist