Investment Management Corporation

British Columbia Investment Management Corporation
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July 12, 2013

VIA EMAIL

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, Nunavut

c/o
The Secretary
Ontario Securities Commission
comments@osc.gov.on.ca

and
Anne-Marie Beaudoin
Secrétaire de l'Autorité
Autorité des marchés financiers
consultation-en-cours@lautorite.qc.ca

Re: Comments on proposed amendments to National Instrument 62-103 - Early Warning System and Related Take-Over Bid and Insider Reporting Issuer, National Instrument 62-104 – Take-Over Bids and Issuer Bids and National Policy 62-203 – Take-Over Bids and Issuer Bids (collectively, the "Early Warning System" or "EWS")

Dear Sirs and Mesdames,

This letter sets out the comments of the British Columbia Investment Management Corporation ("**bcIMC**") on proposed amendments to the Early Warning System in response to the March 13, 2013 request of the Canadian Securities Administrators ("**CSA**").

bcIMC is one of the largest Canadian institutional investors and manages a C$100 billion portfolio of globally diversified investments on behalf of the public sector pension plans of British Columbia and publicly-administered trust funds, as well as other public sector bodies.

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General Comments

Our principal comment is to support the CSA's initiative to address the issue of "empty voting". As an investment manager with a long term investment horizon, we feel it is important that shareholders who do not have economic interests aligned with the company or with other shareholders should not have the ability to influence important corporate decisions, particularly when such shareholders can acquire a significant voting position with no disclosure to the company, other investors or to the regulators.

Although the proposed rules relating to disclosure of arrangements which may result in empty voting are a positive development, we encourage the CSA to implement rules not only requiring disclosure, but to go further by not permitting such investors to vote securities when they have taken measures to significantly reduce or eliminate their economic exposure and their alignment with other shareholders and the company.

We are similarly supportive of the initiative to include disclosure of derivative instruments that result in substantial economic interest and possible voting positions being acquired via derivative instruments - "hidden ownership". This disclosure is important in order to better understand the aggregate position a large holder actually has in an issuer.

We would also like to note that we have been involved with the comment letter on the Early Warning System submitted by the Canadian Coalition for Good Governance and would like to express our support for the positions set forth therein.

In addition to the foregoing, we offer the following comments to some of the specific questions raised in the proposed amendments to the EWS.

Other Comments

CSA Question 2. (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.

If an eligible institutional investor purchases securities and relies on the alternative monthly reporting system ("**AMR system**") and therefore does not have any intention to affect the control of the issuer, including to solicit proxies under the proposed rules, we believe the one business day moratorium on trading securities should not apply until the 10% threshold has been reached. If there is no intention for an eligible institutional investors to influence control of the issuer, the policy rationale of giving the market time to absorb the information does not justify the administrative and potential financial impact of imposing such restrictions at such a low level, particularly in Canada when it will be relatively easy for large institutional investors to meet the 5% threshold as compared to participants in larger markets such as the US.

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CSA Question 2. (b) The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.

We agree with this approach. The policy rationale to prevent hidden ownership and disclosure of equity equivalent derivatives is equally, or even more, applicable to the moratorium. If the one business day moratorium is not applicable to equity equivalent derivatives, an investor can accumulate an equivalent position during the period the moratorium applies to the equity securities.

CSA 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.

We do not feel it is appropriate to reduce the reporting threshold for EIIs who qualify to use the AMR system. We support the comments made by the Canadian Coalition for Good Governance and ask that the CSA fully consider the fundamental market differences of the Canadian market including the negative impact such reduced threshold would have on large Canadian institutional investors who are eligible to use the AMR system.

CSA 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?

We agree with this approach.

CSA 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.

We are supportive of excluding the ability of an EII to use the AMR system if they solicit proxies for a reorganization or similar corporate action involving the securities of a reporting issuer

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since these are matters which may influence or affect control of the issuer. However, we do not think it is appropriate to exclude the use of the AMR system if an EII solicits proxies for less than a majority of the board of directors. A shareholder may solicit proxies relating to a few directors the shareholder feels are underperforming in their duties, but not have any intention of affecting the overall control of the issuer. That should not result in the inability to use the AMR system.

We ask the CSA to remove the words "matters relating to" the election of corporate directors as those words could be broadly construed to include proxy battles on corporate matters such as the implementation of individual director election rather than slate election, the implementation of a majority voting policy or other similar governance initiatives which are "related" to the election of directors but support broader governance initiatives rather than control of the issuer.

We also ask the CSA to remove the inability to use the AMR system at such time an investor "intends" to solicit proxies. It would significantly affect negotiations if an issuer who is negotiating corporate governance issues with an investor can rely on the fact that an investor is using the AMR system to ensure they have no intention to solicit proxies. Furthermore, we ask for clarification on what is meant by solicit in this instance. We suggest that the proposed rules should be revised so the AMR system is unavailable only when an investor has made a direct solicitation of proxies by providing a form of proxy to security holders or has requested to be appointed proxy-holder. Simply attempting to engage management or express an opinion to the public relating to the affairs of a reporting issuer should clearly not make the AMR system unavailable.

CSA 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.

We are supportive of the proposal to exempt a lender from the early warning requirements for securities which are on loan when the lending arrangement provides an unrestricted ability for the lender to recall the securities or requires the borrower to vote in accordance with the lender's instructions. Investors such as bcIMC who, as a matter of course, recall and vote securities should not be required to file a press release, report and have a moratorium on trading securities in which it holds greater than a 5% position, each time 2% of those securities are lent and again when re-acquired under securities lending arrangements when the ability to vote those securities is always present.

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

We agree with the proposed definition.

However, as a related comment we feel the requirement to report any "material terms" of securities lending arrangements is overly broad. If the intent of disclosure is to ensure the relationship between a borrower and lender is clear and appropriately allocated with regards to being able to influence the affairs of an issuer, the only relevant information is the number of applicable securities on loan, the recall rights and the duration. There should be no need to disclose other "material terms" of the arrangement, which terms may be commercially sensitive.

Conclusion

We thank you for the opportunity to comment on these proposed amendments and for your consideration of our comments.

Yours Truly,

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

Paul Flanagan
Acting Chief Executive Officer and Chief Investment Officer