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July 12, 2013

VIA E-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, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Attention:
The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment on Proposed Amendments to Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and National Policy 62-203 Take-Over Bids and Issuer Bids and National Instrument 62-103 Early Warning System and Related Take-Over Bid and Insider Reporting Issues (collectively, the "Proposals")

We are writing in respect of the request for comments dated March 13, 2013 regarding the Proposals. Our comments are limited solely to the impact of the Proposals on the Early Warning System. We appreciate the opportunity to comment on these important matters.

Invesco Canada Ltd. ("Invesco Canada") is a wholly-owned subsidiary of Invesco Ltd. ("Invesco"). Invesco is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of June 30, 2013, Invesco and its operating subsidiaries had assets under management of approximately US$706 billion. Invesco operates in more than 20 countries in North America, Europe and Asia.

Invesco Canada is registered as an investment fund manager, a portfolio manager and an exempt market dealer in Ontario and certain other provinces. Invesco Canada offers mutual funds to the public through 3 brands: Invesco, PowerShares and Trimark. It is primarily in respect of the Trimark funds that the proposed changes to the Early Warning Reporting requirements cause us concern.

Certain Trimark funds invest directly in equities of Canadian issuers as part of their fundamental investment objective. Those funds include:

Trimark Canadian Fund
Trimark Canadian Class
Trimark Canadian Endeavour Fund
Trimark Canadian Opportunity Class
Trimark Canadian Plus Dividend Class
Trimark Canadian Small Companies Fund (the "Small Cap Fund")

The Trimark investment teams typically run very concentrated portfolios, holding between 20 and 40 positions at a given time. As a result of extensive research, the Trimark investment teams tend to develop great conviction with respect to their investment ideas, and reflect this conviction by taking significant positions in their investments. Typically, a Trimark fund will have several positions with portfolio weightings of 7 or 8%. In the context of the Canadian market, especially with respect to small capitalization and mid-capitalization companies, such investments often approach 10% of the outstanding common shares of the issuer.

We do not fully agree with the proposal to reduce the reporting threshold from 10% ownership to 5%, as contemplated in the Proposals. Our primary concern is that by requiring reporting at the 5% level our investment teams will be forced to divulge proprietary investment information to the market, making it more difficult and costly for our managed funds to meet their investment objectives. This concern is multiplied as a result of the disproportionate impact of the Proposals on mutual funds subject to National Instrument 81-102 – Mutual Funds ("NI 81-102").

Mutual Funds and the current system

Under the current early warning reporting regime, mutual funds that are not reporting issuers are treated as "eligible institutional investors" ("EIIs") and, therefore, may take advantage of the Alternate Monthly Reporting ("AMR") system available under NI 62-103 - Early Warning System and Related Take-Over Bid and Insider Reporting Issues ("NI 62-103"). However, mutual funds that are reporting issuers may not take advantage of the AMR system. This leads to an odd result since a mutual fund that is currently a reporting issuer that crosses the 10% ownership threshold for an issuer would have 2 days (from the date the threshold is crossed) to issue a press release and file an early warning report. In contrast, if that same mutual fund were not a reporting issuer, it could wait until 10 days following the end of the month in which it crossed the threshold and file under the AMR system, without issuing a press release. Further, if both mutual funds reduced their position to below 10% prior to month end, the non-reporting issuer mutual fund would have no reporting obligation but the NI 81-102 mutual fund would still be required to report.

We do not understand how the reporting issuer status of a mutual fund can possibly matter from a reporting perspective, given the rationales cited by the Canadian Securities Administrators ("CSA") for changing the early warning reporting system (which we discuss in the next section of this comment letter). However, under the current system, this distinction between reporting issuer status for mutual funds has not been an issue for NI 81-102 mutual funds by virtue of section 2.2 of NI 81-102, which prohibits a mutual fund subject to NI 81-102 from acquiring securities of an issuer if immediately following the purchase it would own more than 10% of the outstanding equity or voting securities of the issuer.

The Proposals disproportionately affect mutual funds

Under the Proposals, the non-reporting issuer mutual fund would certainly face an increase in filings, but it would still be able to avail itself of the AMR system. However, the NI 81-102 mutual fund, especially a mutual fund managed using the Trimark investment approach, would now regularly have filings during the month, to be made within 2 days of the threshold event. This is a significant departure in the reporting regime for mutual funds, and the inconsistency in reporting regimes does not, in our view, meet any policy objectives set out by the CSA. It is also not apparent to us how issuing a press release in this situation would be helpful to the market given the constraints on activism by mutual funds. That said, if the Proposals were largely enacted "as is" and the mutual fund decided to become activist by, for example, launching a proxy contest, we would agree that it makes sense for the mutual fund to update the public record within a couple of days of the change of intention and prior to any direct activity taking place.

In addition to the foregoing, there are two impacts of the Proposals to Invesco Canada that are problematic and the major source of our concerns: (1) increased transparency makes it more difficult and expensive to execute Trimark investment strategies; and (2) the Proposals, as written, would require a significant increase in our reporting activity, which comes with a cost. These costs, in our view, have been ignored by the CSA in their analysis of the anticipated costs and benefits of the Proposals.

Strategy Execution

It would become more difficult and expensive for Trimark funds to execute their investment strategies since a hallmark of the Trimark approach, which is a value-based discipline, is to construct highly concentrated portfolios, each containing between 20 and 40 investments. As such, individual positions tend to have a significant weighting. In the context of the Canadian market, especially as regards small and mid-capitalization stocks, this also implies that individual holdings may constitute a significant amount of an issuer's shares outstanding. For example, the Small Cap Fund had net assets of almost $470 million at the end of June and a quarter of its holdings (by number) are in issuers with a market capitalization of $250 million or less. All of those positions would be caught by the lower thresholds set forth in the Proposals whereas none of them would be caught under current rules.

The obvious implication of earlier disclosure of such activity is that it will be more expensive to accumulate stock in a company and this may cause a change in the investment strategies of these investment teams. This negatively impacts our investors because the portfolio manager will be faced with 2 choices: continue purchasing investments to attain target weight but pay more to do so (thereby adversely impacting the return on the investment); or limit the size of a position to avoid that impact and place more assets in lower conviction investments (which may also adversely impact portfolio returns). We do not believe this is an intended consequence of the Proposals.

A corollary to the second choice noted above is to simply increase the number of investments in the portfolio. We do not believe this is a viable option for two reasons. Increasing the number of portfolio holdings assumes there are sufficient investments that meet the portfolio manager's investment criteria. The Trimark funds and most funds with a value investing style tend to have relatively higher cash balances for lengthy periods due to a dearth of qualified investment opportunities, so increasing the number of investments may exacerbate this situation. More importantly, because of the nature of the investment style each investment in a portfolio, as well as investments being considered for inclusion in a portfolio (and this list may be equal in number to the number of portfolio holdings) must be followed by a portfolio manager or an analyst who must maintain a high degree of familiarity with and knowledge of the issuer. There is a limit on how many issuers any one individual can reasonably follow to the degree necessary to make this style of investing successful.

From the perspective of Invesco Canada, the number of filings required by the Proposals, as written, would significantly increase, thereby increasing our costs. During 2012, we made 24 filings under the AMR system. Under the Proposals, we would have had to make at least 46 filings under the AMR system as an investment manager and an additional 34 filings at the fund level. Moreover, the fund level filings would have had to have been made within 2 days of crossing the applicable threshold. Such costs would be disproportionally borne by investment funds rather than other investors in the capital markets. While we would not be thrilled with the 46 AMR system filings for the reasons cited in earlier paragraphs, as well as the resources required to enable those filings, we are more concerned with the 34 non-AMR system filings as we see no public purpose for those. We do not believe there is any public utility in having the funds file individually, as opposed to in aggregate from the perspective of the investment manager, as it is the latter that exercises control or direction over the securities in question, at least with respect to NI 81-102 mutual funds.

We also believe that the Proposals as drafted will ultimately lead to another unintended consequence. An NI 81-102 fund is required to have a manager and a portfolio manager. The portfolio manager (or a sub-adviser) exercises control or direction over the holdings in the fund. As such, the portfolio manager's aggregate position is what is relevant for the legitimate purposes of early warning reporting. However, by lowering the threshold to 5% and not providing an exception for mutual funds, the public may be misled as positions will, of necessity, be double reported in instances where more than one fund holds large positions in an issuer. The misleading nature of the filing combined with the costs of doing so requires that the regulatory initiative be justified in the public interest, that it add something to the disclosure in the public purview and that such additional benefit outweighs the cost. That is simply not the case with the Proposals.

Proposed Solutions

To address these issues, we strongly urge the CSA to expand the definition of EIIs to include all mutual funds (as opposed to just mutual funds that are not reporting issuers) and to state, either in NI 62-103 or in the Companion Policy thereto that an individual mutual fund is not required to make any filings of this nature if the investment manager makes the filings in the aggregate. While this does not address the difficulties we have with a 5% threshold, it does address what we believe is a likely unintended consequence of the Proposals.

Furthermore, we recommend that the Proposals be modified so that the AMR system not be impacted, i.e. it remains at a 10% threshold with additional filings at 12.5%, 15% and 17.5%. However, to address the CSA's concerns, we believe that an EII should cease to be eligible for the AMR system upon a change of intention from passive investing to an activist stance, including proxy solicitation and the other circumstances described in section 4.2 of NI 62-103. That is, a press release and early warning report should be filed within 2 days of the change of intention, whether or not the EII has crossed the 10% AMR system threshold, and become subject to the incremental filing with every 2% increase in ownership of the issuer.

Rationale for Lowering Initial Reporting Threshold to 5%

In the Notice accompanying the Proposals, the CSA has set forth a number of rationales for lowering the initial reporting threshold to 5% of outstanding shares. In many places above, we have noted that the Proposals are not justified on a cost-benefit basis. To assist your understanding of our position, we will address those rationales in this section.

The CSA states that it may be possible for a shareholder at the 5% level to influence control of an issuer. There is nothing magical about 5%. One can imagine circumstances where influence is gained at lower thresholds and one can also imagine circumstances where a shareholder with 5% has no influence. For example, in circumstances where Trimark funds own 8% of the outstanding shares of an issuer, it is not always possible for the portfolio manager to secure a meeting with the issuer's board. In contrast, we believe known activist investors with a lower level of ownership, perhaps 3%, have no problems in that regard. We believe the reasons for this are fairly obvious. In the context of Canadian issuers, there are many instances where 5% is not an influential holding. We note that the presumption under the Securities Act (Ontario) and other provincial securities statutes is that control requires 20% ownership. Should the CSA pursue this rationale, we would ask the CSA to provide some evidence that this is the case – beyond Staff's mere belief – in order that we may challenge this rationale more fully. We do not agree that a 5% holding significantly influences many issuers in Canada.

The CSA states that significant shareholding is relevant for proxy-related matters (for example, under corporate legislation, a shareholder can generally requisition a shareholders' meeting if it holds 5% of an issuer's voting securities). We agree that corporate legislation typically permits requisition of meetings at the 5% level. However, we do not agree that this provides an adequate reason to lower reporting thresholds. However, if this is a serious issue for the CSA, the same goal can be achieved by requiring a 5% holder of shares to file a report prior to commencing the process of requisitioning a meeting. The time lag between the report and the requisition should be the subject of public consultation. We also note that many issuers have recently changed their by-laws to include advance notice provisions, making it far more difficult for investors to surprise a company's board with a proxy battle. The CSA should consider these important market developments in determining whether such regulatory changes are actually necessary or helpful to the capital markets.

The CSA states that market participants may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions. In our view, this is the same as the first enumerated rationale for lowering the threshold. Please refer to our comments above. Further, we know of no market participants seeking to effect change in a Canadian reporting issuer who failed to do so because they were unable to identify significant voting blocks in advance of the transaction.

The CSA states that significant accumulations of securities may affect investment decisions. This is precisely the reason we oppose lowering thresholds. The Small Cap Fund has been a leader in its category for many years. We suspect that many participants in the capital markets would want to mimic what that fund does. As a small capitalization fund, we would anticipate that the lower thresholds will trigger much reporting by this fund, reporting that it has not hitherto been subject. This fund currently has approximately 10 positions that constitute more than 5% of the issuer's outstanding share capital, representing more than 25% of the fund's holdings. We do not believe that investors have a right to this information without paying for it. If an investor wants to gain access to the intellectual capital of the lead portfolio manager, they ought to pay us a fee for that.

The CSA states that the identity and presence of an institutional shareholder may be material to some investors. While this may be true, we do not believe that this is or ought to be a relevant consideration for investors and we do not believe the CSA should promulgate rules that encourage investors to make decisions based on any particular set of criteria. The amount of institutional ownership of a security is often available through public information services already (such as Google Finance) based on current reporting requirements. While some may find institutional ownership to be relevant to a degree, we would expect that those who consider institutional ownership would not be impacted in their decision-making if an issuer has 5% vs. 10% institutional ownership. It is more likely that differences of 20% would make a difference, so the decision-maker may consider 5% vs. 20% to be relevant, or 20% vs. 40% to be relevant. The identity of specific institutional shareholders, while desirable, is not a sufficiently good reason for reform in this area, given the costs and other issues we have enumerated above.

The CSA states that a lower early warning reporting threshold will provide all market participants with greater information about significant shareholders and thereby enhance market transparency. While this is an effect of the Proposals, this is not an adequate rationale for reform as the CSA offers no comment on why there is value to that transparency at a 5% level rather than at a 10% level. We agree that transparency is important for efficient capital markets; however, such a rationale relates to transparency in the affairs of the issuer, not in the affairs of its shareholders.

The CSA states that a 5% threshold would be consistent with the standard of several major foreign jurisdictions. Generally, we strongly disagree with any rationale for reform based on a "keeping up with the Joneses" argument. By using the word "several" in this rationale, the CSA signals that not all major foreign jurisdictions have adopted a lower threshold. Why does the CSA think the 5% jurisdictions are correct and the others are not? What evidence is there that corporate governance is better in 5% jurisdictions than in jurisdictions with higher thresholds or that do not have reporting requirements? It is incumbent upon the CSA to answer these questions to the extent it relies on this rationale to move forward with the Proposals.

We also note that the reporting requirements in jurisdictions that require a 5% threshold, such as the United States, are often far less onerous than the requirements in the Proposals with respect to mutual funds. For example, Invesco files 'Schedule 13G' reports on an annual basis with the SEC (at the manager level) for securities that surpass the 5% ownership threshold, and then must file more timely updates (within 10 days) following the increase in the ownership of such security to a 10% threshold (and then again at 15%). These reporting requirements are in recognition of the fact that mutual funds are typically passive investors, and thus very timely constituent holding information does not serve the capital markets effectively relative to the high costs of compliance. As such, we reiterate our request that the CSA expand the definition of an EII to remove such onerous reporting requirements on mutual funds in Canada.

Finally, the CSA states that changes in corporate governance practices have increased the need for issuers to communicate directly with beneficial owners. A lower threshold would provide reporting issuers greater visibility into their shareholder base and a greater ability to engage with significant shareholders earlier. It would also allow shareholders to communicate among themselves earlier. We believe that this is a dubious rationale and potentially contradicts National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer ("NI 54-101") which permits beneficial shareholders to remain anonymous. To our knowledge, there is no inherent "right" of an issuer to know the identity of its shareholders. Often, significant shareholders reveal themselves to the issuer on their own initiative. Otherwise, significant shareholders should be left alone.

CSA Questions for Comment

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.

Insofar as our recommendations above regarding NI 81-102 mutual funds are not adopted by the CSA, we strongly oppose a 1% further reporting threshold. Whether a filer has 5% or 6% of an issuer's shares is really irrelevant based on the rationale for a lower threshold set out in the Proposals yet it entails a significant cost. We believe the current balance, 2% in the regular system and 2.5% in the AMR system represents an appropriate balance. We note that no rationale for a 1% additional reporting threshold has been published, which makes it difficult for us to comment.

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.

Our preference would clearly be that the 5% initial reporting threshold would not apply to EIIs reporting under the AMR system as we do not believe the rationales provided are very strong. The benefits again must be tangible and greater than the costs to EIIs of this enhanced reporting. Where the lower threshold for reporting is relevant is where the EII decides to become activist with respect to that particular issuer. As such, we think an appropriate compromise would be to exclude Part 4 from the Proposals other than the proposed addition of clause (c) in section 4.2, which would take the EII out of the AMR system upon becoming activist.

We think it is important to note that many EIIs with significant holdings in an issuer are known to an issuer as those EIIs typically tend to reveal themselves, whether to better understand the corporate strategy or simply to learn more about the issuer. We do not believe there is a real problem of lack of identification of institutional shareholders by issuers and, even if there were, it has never been a requirement of securities law that shareholders be identifiable to the issuer. It is not clear why that would be of concern to securities regulators. As such, we challenge the CSA to articulate while that would be desirable and how it squares with the ability to remain anonymous as an "objecting beneficial holder" under NI 54-101.

(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.

As we have said repeatedly in this letter, we see no benefit for EIIs, either as investors or as providers of information, in lowering the reporting threshold other than in the exclusion circumstances set out in section 4.2 of NI 62-103. We are also unclear what investor interest is served by such, other than providing the proprietary information of EIIs to investors who may seek to mimic the investment patterns of EIIs. We do not believe that is a socially beneficial activity and, as such, securities regulators should not promote or encourage such activity.

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.

We do not believe there are any benefits whatsoever to the capital markets to having individual mutual funds, as opposed to the investment managers who exercise control or direction over the portfolio securities of those mutual funds, comply with an early warning threshold of 5%. We have discussed this point extensively above. We believe that mutual funds should be excluded from the early warning system unless management of the portfolio is internalized within the fund. The proper reporting party for these matters is the investment manager.

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 note that under the AMR system, in the circumstances described by this question, once the EII's intention changes from passive holding to more active, which would include proxy solicitation, a new AMR must be filed indicating the change in the nature of the holding. In November 2012, Invesco Canada made such a filing in connection with our involvement in Rona Inc. We know of no complaints or criticisms that arose in connection therewith. Notwithstanding the foregoing, we understand the rationale for the exclusion referred to in this question and agree that in the context of the Proposals it makes sense.

Thank you for providing us with the opportunity to comment on this important initiative. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

Invesco Canada Ltd.

Eric Adelson
Senior Vice President and Head of Legal – Canada