



PROSPECTORS &
DEVELOPERS
ASSOCIATION
OF CANADA

July 15, 2013

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

Anne- Marie Beaudoin
Corporate Secréter
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment - Proposed National Instrument 62-105
Security Holder Rights Plans**

This letter is submitted on behalf of The Prospectors & Developers Association of Canada ("PDAC") in response to the invitation to comment on the Canadian Securities Administrations ("CSA") proposed National Instrument 62-105 (the "Proposed Rule") regarding securityholder rights plans and the Autorité des marchés financiers ("AMF") consultation paper regarding defensive tactics (the "AMF Proposal").

PDAC is an industry organization which represents the interests of the Canadian mineral exploration and development industry. The association was established in 1932 in response to a proposed government regulation that threatened the livelihood of Ontario prospectors. Today, 81 years after its founding, the association is a national organization with 10,000 individual members (including prospectors, developers, geoscientists, consultants, mining executives, and students, as well as those involved in the drilling, financial, investment, legal and other support fields) and over 1,200 corporate members (including senior, mid-size and junior mining companies and organizations providing services to the mineral industry).

Proposed Rule

PDAC agrees that the regulation of rights plans could be improved. The necessity for a hearing to cease trade a rights plan results in a substantial investment of time and money and uncertainty for issuers and bidders alike. In addition, the conflicting decisions in different provinces, and sometimes within the same province, contribute to uncertainty and inefficiency.

However, we are concerned that the implementation of the Proposed Rule will result in adverse consequences for targets, particularly junior issuers. These concerns relate to the following:

- The Proposed Rule will generally provide a board of directors with 90 days to use a rights plan. In the context of a mining company, where the due diligence required in an auction process can be a significant undertaking and involve global bidders, this time may be insufficient to conduct a robust and meaningful auction. We would recommend this time period be increased to 120 days.
- There is a risk the Proposed Rule will result in an increased number of proxy contests in a contested hostile bid context. This will require a substantial investment of time and money, which may be particularly taxing for smaller issuers and detract from the board's focus on value-maximization strategies. It would be simpler and more cost effective if the Proposed Rule provided that a rights plan may remain in place until the later of (i) 90 days from the date the bid was commenced; and (ii) the date on which a majority of the shareholders approve termination of the rights plan at a meeting or, in the case of a rights plan not approved by shareholders in an annual meeting, by written consent. For efficiency, written consent could be addressed in the letter of transmittal associated with the bid.
- The Proposed Rule does not address other defensive tactics which are relevant in a hostile bid context. This leaves some uncertainty for target boards with respect to the use of other defensive tactics and the door open for bidders to pursue expensive and time consuming hearings related to the use of non-rights plans defensive tactics.
- Directors of corporations have duties under corporate and common law, particularly the BCE decision, that may be unfulfilled given the lack of deference to the business judgement rule in the Proposed Rule.
- The Proposed Rule does not address the potential impact of proxy advisory services on the ability of a target to put in place a poison pill annually. If proxy advisory services suggest rejection of an annual pill, it will likely not be a viable option for companies.

AMF Proposal

PDAC appreciates the broad and holistic approach of the AMF Proposal in assessing defensive tactics in Canada.

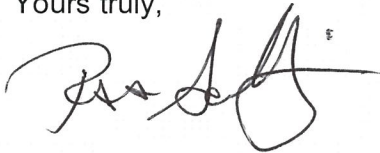
Our view is that the AMF Proposal will benefit companies by providing boards of directors a mechanism to address opportunistic take-over bids, which most often lead to the sale of a company. This state of affairs particularly penalizes smaller issuers who have not yet had the opportunity to realize on their strategic plans. In addition, as the AMF Proposal will consider all defensive tactics, uncertainty over the use of additional defensive tactics by boards facing a hostile bid may be reduced.

Summary

PDAC encourages the CSA to perform a broader review of defensive tactics and principles contained in the AMF Proposal prior to implementing the Proposed Rule. We believe this review will assist in the development of efficient capital markets.

PDAC appreciates this opportunity to provide you our comments. If you have any questions regarding the foregoing, kindly contact the undersigned.

Yours truly,

A handwritten signature in black ink, appearing to read "Ross Gallinger". The signature is fluid and cursive, with a small "E" or similar mark at the end.

Ross Gallinger, P.Ag.
Executive Director
Prospectors & Developers Association of Canada

Cc: Barbara Hendrickson, Co-Chair of PDAC Securities Committee
Brice McLeod, Co-Chair of PDAC Securities Committee
Jonathan Grant, Member, PDAC Securities Committee (McCarthy-Tetrault)