

June 29, 2015

The Secretary
Ontario Securities Commission
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Me Anne-Marie Beaudoin
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Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Dear Secretary and Me Beaudoin,

Re: Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) and changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (NP 62-203) (collectively, the Proposed Bid Amendments)

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments regarding the Proposed Bid Amendments. CIRI is

committed to educating its members and other stakeholders regarding the value of appropriate investor relations and capital markets best practices as an element of appropriate corporate governance best practices.

CIRI has over 500 members from across Canada, 70% of which are investor relations professionals employed by publicly listed reporting issuers. CIRI membership represents over 200 publicly listed issuers with a combined market capitalization of over \$1.5 trillion. CIRI issuer members represent 85% of the S&P/TSX 60 Index companies and 54% of the S&P/TSX Composite Index companies. Please see Appendix A for more information about CIRI.

General Comments

We commend the CSA for proposing harmonized amendments to the take-over bid regime that put unsolicited or 'hostile' bidders and target companies on a more equal footing. We recognize the effort expended to arrive at this alternative co-ordinated proposal that responds to comments from a broad section of market participants following the publication of the initial CSA and AMF proposals in 2013. Different regulatory initiatives seeking to achieve similar outcomes can be confusing, costly and potential conflicting for issuers.

CIRI is of the firm belief that Canada needs to enhance the quality and integrity of the current take-over bid regime and that the proposed revisions to the regime are appropriate in order to balance the scales between hostile bidders and target companies. In a survey of CIRI members there was overwhelming support among commenters for updating and revising the current takeover bid regime.

CIRI recognizes that no matter what regulatory regime is established going forward, the ultimate decision regarding the outcome of an unsolicited take-over bid rightly rests with the shareholders of the target entity. CIRI also firmly believes that any take-over bid regime or process must be designed to provide an opportunity to enhance the value of the target for the benefit of all shareholders collectively. To that end, CIRI takes the position that target Boards of Directors are in the best position to influence value enhancement during a bid process and should be provided the appropriate tools and rights to ensure that they can achieve this outcome. To that end, CIRI generally supports the Proposed Bid Amendments.

CIRI also notes that the Proposed Bid Amendments, particularly the 120-Day Requirement and the 10-day Extension Requirement, have the benefit of potentially increasing clarity and consistency in transactions, while reducing the involvement and/or intervention of securities regulators (and the inherent uncertainty of hearings and cease-trade orders).

Specific Proposals

CIRI believes that the current regime does not allow the Board of Directors of target issuers sufficient time to fulfill their fiduciary duty to act in the best interests of the corporation.

1. The 120 Day Requirement

CIRI supports the move from the current minimum 35-day deposit period to a minimum 120-day deposit period (subject to either a shorter period, of not less than 35 days, acceptable to the offeror Board of Directors or the acceptance by the offeror of a specified alternative

transaction) because it significantly improves the potential for increased valuation and better enables Directors to more effectively meet their fiduciary obligations to act in the best interests of the corporation. The longer deposit period provides additional opportunities for a more fulsome assessment of the offer and possible negotiation between the bidder and target board; for the surfacing of one or more potential competitive bidders; for the identification of value-maximizing alternative bidders (i.e. the 'white knight' scenario); or to convince shareholders that the current strategy provides the best long-term option. It should be noted that several months are often required to identify prospective 'white knights', to give them sufficient time to conduct due diligence and to negotiate the final transaction.

It is imperative that the Board be afforded sufficient time and leverage to pursue these various options to determine and/or negotiate that avenue which provides optimal benefit to both the target issuer and the existing majority and minority shareholders. In allowing this process to unfold in an appropriate manner and over an appropriate period, the board will have its best opportunity to deliver an option that generates maximum value and benefit to all shareholders.

From the perspective of investor relations professionals, the minimum 120-day deposit period provides the additional time that is necessary to increase the quality and integrity of the take-over bid regime, key policy objectives of the Proposed Bid Amendment. The extended time allows a target issuer to assess and develop its response to the unsolicited bid, to formulate its communication strategy, identify its current shareholder base (which may have radically altered upon the bid announcement) and to pursue fulsome engagement with current shareholders. Such engagement is key to ensuring that the target's business, often complex, and its position vis-à-vis the take-over bid is well understood and appreciated by those shareholders who are rightly being asked to make the ultimate decision regarding the outcome of the unsolicited take-over bid.

The importance of 120 days as a minimum deposit period has been fully explained and supported by a group of experienced senior legal practitioners from a number of major Canadian law firms that provided commentary in their submission to the CSA and AMF in response to the initial 2013 CSA and AMF Proposals.¹ This group has stated explicitly that a bid period of 120 days is critical - based on their experience advising both targets and bidders.

CIRI takes the position that if regulators seek to establish balance between target Boards and hostile bidders, the Boards must be given sufficient time, a **minimum** of 120 days, to achieve that policy objective.

¹ ["Submission by Ad Hoc Senior Securities Practitioners Group"](#), July 11, 2013

2. The 10-Day Extension

CIRI further views the proposed extension as a “relief valve for undecided shareholders” and supports this aspect of the Proposed Bid Amendments. It is generally agreed by our members that this aspect of the proposal serves to effectively remove the pressure on ‘undecided’ shareholders to tender into a bid simply to avoid being left in the minority or being left with an illiquid security if the bid is successful.

The 10-day extension is seen as an appropriate means to level the playing field for such shareholders and as such also contributes to the CSA policy objectives to improve the overall quality and integrity of the current take-over bid regime.

3. The Minimum Tender Requirement

CIRI believes that the requirement for tenders to a bid to exceed 50% of the outstanding securities owned by shareholders other than the bidder and its joint actors (“Independent Shareholders”) is appropriate, reasonable and fair. Given that any unsolicited bid will constitute a material event for the target issuer, it is appropriate that the outcome should be subject to a mandatory majority acceptance by Independent Shareholders.

The Minimum Tender Requirement will potentially also contribute to a lessening of the uncertainty that often accompanies unsolicited take-over bids. CIRI agrees that the 50% level for tendering represents a clear ‘goal-line’ that is well understood by capital market participants, including those party to the transaction as well as interested observers. This, again, speaks to improved transparency and integrity of the take-over bid regime.

CIRI appreciates the opportunity to comment on the Proposed Bid Amendments and is always available if there are questions regarding our submission.

Yours truly,



Yvette Lokker
President & CEO

APPENDIX A

The Canadian Investor Relations Institute

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined

Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include Nominating; Audit; Membership; Issues; Editorial Board; Resource and Education; and Certification.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is approximately 550 professionals serving as corporate investor relations officers in approximately 300 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of investors and shareholders in capital markets outside of North America. The President and CEO of CIRI also sits as a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.