

June 29, 2015

BY 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
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor, Box 55
Toronto, Ontario M5H 2S8
Email: comments@osc.gov.on.ca

and

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, Proposed Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* and Proposed Consequential Amendments (the “Proposed Amendments”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the questions relating to the Proposed Amendments.

¹The CAC represents the 14,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

As a general comment, we strongly support the harmonization of the proposed amendments to the take-over bid rules throughout Canada, which will simplify the process for bidders and target companies. We also agree with the introduction of the minimum tender requirement, the additional 10 day extension as well as the minimum deposit period of 120 days as an improvement over the wholesale adoption of either of the previous CSA proposal or AMF proposal and over maintaining the status quo.

We would have preferred to see additional rights and protections for minority shareholders addressed in the Proposed Amendments. While the proposed 10 day extension period does help address concerns with respect to the potential coercion of minority shareholders, the Proposed Amendments do not tackle issues raised by the use of rights plans and other defensive tactics. While the use of such measures may fall out of favour if a longer deposit period is implemented, the Proposed Amendments do not address the problems related to board entrenchment that can occur with the use of a rights plan. We supported the portion of the CSA's proposal which would have allowed an offeree board to maintain a rights plan if a majority of equity or voting securities (excluding certain securities) were voted in favour of the plan. We also believe that additional guidance on when the securities regulatory authorities will intervene to cease trade a rights plan would be helpful to market participants.

1. The Proposed Bid Amendments contemplate the reduction of the minimum deposit period for take-over bids in the event that the offeree board issues a deposit period news release. Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to a deposit period news release and the ability of an offeror to reduce the initial deposit period for its bid as a result of the issuance of a deposit period news release?

We are of the view that a reduction in the initial deposit period to 35 days may be an acceptable time period, in the expected circumstances where the board has, in the exercise of its fiduciary duties and acting in the best interests of shareholders, chosen to support the bid. The relevant materials will be immediately available on SEDAR for consideration by investors such that they will have sufficient time to make an informed decision whether or not to tender; it may otherwise take some time to receive the materials in the mail, thereby effectively shortening the 35 day period.

2. The Proposed Bid Amendments provide that the minimum deposit period for an outstanding or future take-over bid for an issuer must be at least 35 days if the issuer announces that it has agreed to enter into, or determined to effect, an "alternative transaction". The Proposed Bid Amendments include a definition of "alternative

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

transaction” that is intended to encompass transactions generally involving the acquisition of an issuer or its business. Do you agree with the scope of the definition of “alternative transaction”? If not, please explain why you disagree with the scope and what changes to the definition you would propose.

We agree with the breadth of the definition of “alternative transaction” and that its scope is sufficiently comprehensive.

3. Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to alternative transactions? Does the proposed policy guidance in sections 2.13 and 2.14 of NP 62-203 assist with interpretation of the alternative transaction provisions?

We do not anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to alternative transactions.

4. The Proposed Bid Amendments include a number of provisions that are specific to partial take-over bids. In particular, the Proposed Bid Amendments contemplate that an offeror making a partial take-over bid is only obligated to take up, at the expiry of the initial deposit period and assuming all pre-conditions to the bid are met, the maximum number of securities it can without contravening the pro rata take up requirement (s. 2.32.1(6)). Then, at the expiry of the mandatory 10 day extension period, the offeror must complete the pro rata take up obligation in respect of securities previously deposited (but not taken up) and securities deposited during the mandatory 10 day extension period (s. 2.32.1(7)). Would policy guidance concerning the interpretation or application of the Proposed Bid Amendments as they relate to partial take-over bids be useful? If so, please explain.

Additional policy guidance could be helpful with respect to the number of securities that can be taken up subsequent to the initial deposit period but prior to the end of the mandatory 10 day extension period (i.e. a numerical example).

5. The Proposed Bid Amendments include revisions to the take up and payment and withdrawal right provisions in the take-over bid regime. Do you agree with these proposed changes or foresee any unintended consequences as a result of these changes? In particular, do you agree that there should not be withdrawal rights for securities deposited to a partial take-over bid prior to the expiry of the initial deposit period for so long as they are not taken up until the end of the mandatory 10 day extension period?

While withdrawal rights empower shareholders and we are of the view that security holders should generally be permitted to withdraw their shares, we agree that in the narrow circumstance related to securities deposited under a partial take-over bid prior to take-up permitting withdrawal rights could defeat the purpose of the 10 day extension period and could possibly result in a failed bid.

6. *Are the current time limits set out in subsections 2.17(1) and (3) sufficient to enable directors to properly evaluate an unsolicited take-over bid and formulate a meaningful recommendation to security holders with respect to such bid?*

We are not aware of any practical issues resulting from the current time limits; it would be beneficial for shareholders if directors made their recommendation as soon as possible.

7. *Do you anticipate any changes to market activity or the trading of offeree issuer securities during a take-over bid as a result of the Proposed Bid Amendments? If so, please explain.*

We do not have a view as to whether any changes to market activity or trading of offeree issuer securities will result from the Proposed Amendments. If market participants wish to try to profit from price discrepancies or otherwise they will likely continue to do so within the regulatory framework regardless of the final form of the rules.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Cecilia Wong*

Cecilia Wong, CFA
Chair, Canadian Advocacy Council