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June 11, 2018

BY E-MAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Dear Sirs/Mesdames:

Re: CSA Staff Notice 61-303 and Request for Comment – *Soliciting Dealer Arrangements*

We are writing in response to CSA Staff Notice 61-303 and Request for Comment – *Soliciting Dealer Arrangements* issued on April 12, 2018, pursuant to which the Canadian Securities Administrators (CSA) requested comments regarding certain issues identified by staff in respect of the use of soliciting dealer arrangements in proxy contests and corporate transactions. We appreciate the opportunity to provide this comment letter and hope that our submissions will be of assistance.

Use of Soliciting Dealer Arrangements

Merger and Acquisition Transactions

Soliciting dealer arrangements first gained prominence in the context of take-over bids. Under these arrangements, all members of the Investment Industry Regulatory Organization of Canada (IIROC) are invited to form a soliciting dealer group by the bidder or the issuer in order to encourage shareholders to tender their shares to the offer. The broker-dealers participating in the soliciting dealer group are compensated, on a commission basis, based on the number of shares their respective clients tender to the offer. The primary purpose of these arrangements is to increase the likelihood that the minimum tender condition will be satisfied. Minimum tender conditions typically require that at least two-thirds of the shares be tendered to the offer such that the bidder can take up enough shares under the take-over bid to carry out a subsequent acquisition transaction and become the sole shareholder of the issuer.

The formation of soliciting dealer groups in the context of take-over bids is premised on the assumption that most broker-dealers will not proactively reach out to their clients to obtain instructions on whether to tender their shares to an offer unless they receive some form of financial incentive. This was especially true prior to the widespread use of the book-based system currently maintained by CDS Clearing and Depository Services Inc. (CDS), when many shareholders held their shares in certificated form. At the time, the tendering process was much more labour-intensive than it is today and soliciting dealer fees helped offset the back-office costs associated with submitting letters of transmittal and surrendering share certificates in connection with tendering shares to a take-over bid.

Our experience is that the ability of retail shareholders to tender their shares electronically through the procedures for book-entry transfer established by CDS, coupled with the ever-increasing stake that institutional shareholders hold in public issuers, has significantly reduced the use of soliciting dealer arrangements in take-over bids. The practice of establishing a soliciting dealer group has become a fairly rare occurrence limited to target issuers with a substantial retail shareholder base.

We are also aware of situations where soliciting dealer groups have been formed by bidders or issuers in the context of merger and acquisition transactions that proceed by way of plan of arrangement. However, our experience is that this practice is quite infrequent. The soliciting dealer fees paid in the context of these corporate transactions are similar to those paid in connection with take-over bids, with broker-dealers typically receiving a commission for each vote cast by their respective clients in favour of the approval of the transaction. While the level of shareholder participation required for a quorum at a shareholders' meeting called to consider a plan of arrangement is rarely an obstacle to these transactions, like take-over bids, soliciting dealer arrangements can serve to increase shareholder participation and the level of shareholder approval for the transaction. Soliciting dealer arrangements are more likely used in this context for tactical purposes in order to encourage votes in the favour of, or against, a contested plan of arrangement, including in situations where there are competing offers for control of the issuer.

Contested Director Elections

We are aware of three instances where soliciting dealer arrangements have been entered into in connection with a Canadian proxy contest for the election of the directors of an issuer:

1. Octavian Advisors, LP's efforts to elect four of the eight directors of Enercare Inc. in 2012;
2. JANA Partners LLC's efforts to elect five of the 12 directors of Agrium Inc. in 2013; and
3. PointNorth Capital Inc.'s efforts to elect six of the eight directors of Liquor Stores N.A. Ltd. (now Alcanna Inc.) in 2017.

In all three of these proxy contests, the issuer entered into soliciting dealer arrangements to help secure the election of its entire slate of nominees. These arrangements all provided for the payment of a commission (subject to specified minimum and maximum amounts) to each broker-dealer for each vote cast by its clients in favour of the issuer's nominees, and conditional on all of the issuer's nominees being elected.

The approach to disclosure taken by each issuer in respect of the soliciting dealer arrangements entered into in connection with these proxy contexts varied in several noteworthy ways.

Each of Enercare and Liquor Stores issued a press release announcing, among other things, the formation of a soliciting dealer group a little less than two weeks prior to its shareholders' meeting. Enercare stated in its press release that a soliciting dealer group had been formed to solicit proxies on its behalf and disclosed the fees payable to the broker-dealers for each vote cast against Octavian's proposal. The management information circular prepared by Enercare in connection with the meeting was not amended or supplemented to include information about the soliciting dealer arrangements.

The press release issued by Liquor Stores stated that the broker-dealers would be compensated for time spent reaching out to their clients to alert them of the importance of voting in favour of Liquor Store's nominees, but failed to disclose the amount of the soliciting dealer fees or the conditions associated with their payment. Liquor Stores only disclosed the specifics of the fees payable to the broker-dealers in a supplement to its management information circular, which was filed shortly after the issuance of its press release.

Agrium did not issue a press release or update its management information circular upon the formation of its soliciting dealer group. The public only learned of Agrium's soliciting dealer arrangements 18 days after the arrangements were entered into, when they were brought to JANA's attention. JANA immediately issued a press release disclosing such arrangements, including the fees payable to the broker-dealers should Agrium's entire slate of nominees be elected. It should be noted that JANA became aware of Agrium's soliciting dealer arrangements on a holiday weekend with only five days remaining prior to the proxy cut-off for the shareholders' meeting.

Considerations in Contested Director Elections

We are of the view that the CSA should primarily be concerned with the potential issues that arise in connection with the use of soliciting dealer arrangements in contested director elections. The following paragraphs set out certain key considerations that we have identified that arise in such proxy contests, from the perspectives of each of (i) the directors and officers of the issuer, (ii) the dissident shareholders, and (iii) the broker-dealers.

Directors and Officers

The decision whether to use corporate resources to enter into soliciting dealer arrangements in contested director elections must ultimately be made by the directors and officers of an issuer in a manner consistent with the discharge of their fiduciary duties.

Reasonable expenses incurred by an issuer in the normal course to prepare disclosure aimed at informing its shareholders of the recommendations of the board of directors in response to a dissident shareholder proposal would generally be considered a proper use of corporate resources. This would customarily include retaining legal counsel, financial advisors, proxy solicitors, public relations firms and any other advisors that the board of directors might, in its proper business judgment, deem necessary to help it articulate its views and analysis and advance its recommendation to shareholders. There are,

however, limits to this authority and the actions taken by the directors and officers in response to a dissident shareholder proposal must be consistent with their statutory and common law duties.

When directors are responsible for overseeing a proxy contest in respect of their own re-election, an inherent conflict of interest arises that casts doubts as to whether it is in the best interests of the issuer to use corporate resources to compensate broker-dealers to secure votes solely in favour of their re-election. The election of the directors who will be charged with overseeing the business and affairs of the issuer is the purview of the shareholders, and any actions that could reasonably lead to the entrenchment of the current directors are unlikely to be in the best interests of the issuer.

In *Blair v. Consolidated Enfield Corp.*, the Supreme Court of Canada held that the best interests of an issuer in the context of a contested shareholders' meeting "centre solely on the maintenance of the integrity and propriety of the voting procedure".[1] Although this case dealt with the conduct of the chairman at a contested shareholders' meeting, this principle also helps guide the conduct of directors and officers leading up to the meeting, including in respect of the manner in which proxies are solicited.

The payment of soliciting dealer fees by an issuer solely to secure votes in favour of the election of its nominees could be viewed as undermining the integrity of the voting process. The financial incentives created by such fees could unduly influence certain broker-dealers and encourage them to advise their clients to cast votes in favour of the issuer's entire slate of nominees, irrespective of their own independent assessment of the dissident shareholder proposal or whether they are of the view that the re-election of the issuer's nominees would be in the best interests of their clients.

The fees paid by an issuer to broker-dealers under soliciting dealer arrangements should be distinguished from the fees paid by an issuer to a proxy solicitation firm. A proxy solicitor is typically compensated based on the number of outgoing calls made to shareholders, whereas broker-dealers participating in a soliciting dealer group are compensated based on the number of votes actually cast by their clients. Although both fees are ostensibly paid to help the issuer secure proxies in favour of the election of its nominees, a major difference lies in the relationship between the intermediaries and the shareholders. A proxy solicitor is clearly an agent of the issuer and is generally recognized as such. A broker-dealer, on the other hand, is more likely viewed by its client as his or her own objective trusted advisor. As a consequence, shareholders are much more likely to defer to the advice of a broker-dealer than a proxy solicitor with whom they are unlikely to have an existing relationship. Many retail shareholders view their broker-dealer as a trusted advisor and are likely to act on its advice, regardless of whether the broker-dealer has disclosed that it may receive a commission if the shareholder submits a proxy in favour of the issuer's nominees.

If an issuer has legitimate concerns that its retail shareholders would be unable to adequately participate in a contested director election without the formation of a soliciting dealer group, many of the concerns expressed in the preceding paragraphs could be overcome by paying the soliciting dealer fees to the broker-dealers irrespective of how their clients vote. This would abate any concerns that the

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1 [1995] 4 S.C.R. 5 at para. 43.

directors are improperly using corporate resources to entrench themselves. In addition, the consideration offered to the broker-dealers could incentivise them to proactively reach out to their clients and provide them with unbiased advice on how to vote. This in turn, would foster participation by "objecting beneficial owners" (OBOs) – shareholders not directly identifiable or reachable by the issuer – consistent with the principle of shareholder democracy, a purpose frequently proffered to justify soliciting dealer arrangements.

An issuer that has entered into soliciting dealer arrangements in connection with a shareholders' meeting is required to adequately disclose the particulars of such arrangements, including the fees payable to the broker-dealers and the circumstances in which such fees will be paid, in accordance with its continuous disclosure obligations under National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102). This would include issuing a press release setting out this information and filing and delivering a management information circular (or a supplement) in connection with the shareholders' meeting containing the information necessary to comply with applicable corporate and securities laws prior to the broker-dealers beginning to reach out to their clients to solicit their proxies on behalf of management. Given the approach taken in the Enercare, Agrium and Liquor Stores proxy contests, we are of the view that a pronouncement by the CSA to this effect is warranted. In addition, we believe that the CSA should provide guidance regarding the timing of such disclosure to ensure that shareholders have sufficient time to consider the information and make a fully-informed decision on that basis. Ensuring timely disclosure is especially important given the complexity of the issues under consideration and the delays often associated with intermediaries and beneficial shareholders submitting and revoking proxies or voting information forms.

Dissident Shareholders

We are not aware of a proxy contest in Canada where dissident shareholders have formed a soliciting dealer group to help secure votes from other shareholders for their director nominees. That said, there are currently no barriers that would prevent dissident shareholders from entering into soliciting dealer arrangements.

Dissident shareholders are differently situated than issuers in contested director elections. Dissident shareholders are not constrained by fiduciary duties owed to other shareholders or the issuer. Nor are they using other shareholders' resources; instead, they are using their own resources to advance proposals in an effort to institute corporate change, the costs of which can be significant for the dissident (while the benefits of a successful outcome accrue to all shareholders). They are thus able to act in a self-interested manner. The success of the dissident shareholders is typically dependent on them being able to communicate their plans to, and secure the support of, the issuer's other shareholders, in circumstances where the dissident shareholders may not have the same access to information in respect of the issuer and its stakeholders as the issuer itself. As a result, many of the considerations that an issuer's directors and officers must take into account when considering soliciting dealer arrangements are not applicable to dissident shareholders.

That said, from the perspective of the broker-dealer, as discussed below, the payment of soliciting dealer fees by a dissident shareholder to a broker-dealer solely to secure votes in favour of the election of the dissident's nominees presents the same conflict of interest issues for the broker-dealer and

potential to undermine the voting process as when such fees are paid by an issuer solely to secure votes in favour of its nominees. As previously mentioned, the financial incentives created by such fees have the potential to unduly influence broker-dealers and encourage them to advise their clients to vote their shares in favour of the dissident nominees, regardless of their own independent assessment of the dissident proposal.

We are also of the view that dissident shareholders should be held to similar disclosure standards as issuers, which would include the requirement to issue timely and sufficiently detailed press releases and proxy circulars as necessary to comply with applicable corporate and securities laws prior to the broker-dealers being able to reach out to their clients to solicit their proxies in favour of dissident nominees.

Broker-Dealers

Once a soliciting dealer group has been formed, broker-dealers must consider and address any conflicts of interest that might arise as a result of the consideration they will receive for votes cast by their clients. IIROC Rule 42 – *Conflicts of Interest* provides that broker-dealers must address "existing or potential material conflicts of interest in a fair, equitable and transparent manner, and considering the best interests of the client." If a material conflict of interest cannot be addressed in this manner, IIROC Rule 42 requires that the conflict be avoided. Broker-dealers are also required under IIROC Rule 42 to disclose material conflicts of interest in all cases where a reasonable client would expect to be informed. IIROC Notice 17-0093 – *Managing Conflicts in the Best Interest of Clients – Compensation-related Conflicts Review* confirms that disclosure alone is not sufficient to address all material conflicts in accordance with IIROC Rule 42, particularity conflicts related to broker-dealer compensation.

Broker-dealers who accept compensation to facilitate votes only in favour of one side of a contested director election may put themselves in a position of material conflict of interest that prevents them from providing unbiased advice to their clients. Since soliciting dealer arrangements are typically structured such that all members of IIROC are invited to participate in the soliciting dealer group, these arrangements have the potential to preclude a significant portion of an issuer's retail shareholders from obtaining unbiased advice on how to vote in a contested director election.

As previously discussed, broker-dealers are in a position of trust *vis-à-vis* their clients, who are likely to defer to their advice irrespective of whether they are aware that the broker-dealers will be receiving a fee if they vote their shares in a particular fashion. Broker-dealers must therefore first consider whether they can adequately address any material conflicts of interest that might arise as a result of their participation in a soliciting dealer group in light of their professional obligations under IIROC Rule 42. If a broker-dealer, after evaluating the circumstances, concludes that a particular conflict of interest is not material or, if it is, that such conflict of interest can be adequately addressed in accordance with IIROC Rule 42, we believe that the disclosure provided to their clients should, at a minimum, confirm that the broker-dealer will be receiving a fee if its clients cast votes in favour of certain director nominees, the amount of such fee and any associated conditions.

Corporate and securities laws prohibit anyone from soliciting proxies without sending a proxy circular containing prescribed information to shareholders. The definition of "solicitation" is very broad and includes a request that a shareholder "execute or not execute a form of proxy" and the sending of any communication to a shareholder "under circumstances that to a reasonable person will likely result in the giving, withholding or revocation of a proxy." [2]

Communications between a broker-dealer and its clients aimed at facilitating votes in a contested director election constitute proxy solicitation. As a result, broker-dealers must either comply with, or be exempt from, the proxy solicitation rules, including the requirement to provide shareholders with a proxy circular setting out, among other things, the material terms of their engagement and the anticipated costs.

An exemption from the definition of "solicitation" set out in NI 51-102 is available to market participants who provide "financial, corporate governance or proxy voting advice in the ordinary course of business."[3] The purpose of this exemption is to enable such market participants to provide their clients and the public with proxy voting advice without having to prepare a proxy circular. Broker-dealers are generally able to rely on this exemption given the nature of their business. However, this exemption is not available to broker-dealers participating in soliciting dealer arrangements, given that the carve-outs to the exemption preclude (i) solicitations conducted by or on behalf of management or dissident shareholders, and (ii) the receipt of any special commission or remuneration other than from the shareholders receiving the proxy advice.

Accordingly, broker-dealers participating in soliciting dealer arrangements will be in breach of the proxy solicitation rules unless the issuer or the dissident shareholders who formed the soliciting dealer group include the applicable disclosure in their proxy circular or an amendment thereto prior to the broker-dealers beginning to reach out to their clients. We are of the view that a specific pronouncement by the CSA to this effect is warranted in light of the pre-disclosure solicitations by broker-dealers and other timing and disclosure deficiencies described above in the Enercare, Agrium and Liquor Stores proxy contests.

We note that regulators in the United States have taken a much stricter approach to interpreting the proxy solicitation provisions set out in SEC Rules 14a-1 and 14a-2 under the Securities the Exchange Act of 1934, which are similar to those in NI 51-102. The predecessor to the Financial Industry Regulatory Authority (FINRA) issued Notice 92-33 – *Providing of Proxy Voting Advice to Customers* in May 1992 confirming that broker-dealers "may not receive special compensation for furnishing the advice from any person other than the customer and may not rely on the safe harbor if the advice is being furnished on behalf of anyone who is actively soliciting proxies or on behalf of a person who is a participant in an election contest subject to SEC Rule 14a-ll [now SEC Rule 14a-12]."

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2 See generally Part 9 of NI 51-102; see also Section 147 of the *Canada Business Corporations Act* (CBCA) and Section 109 of the *Business Corporations Act* (Ontario) (OBCA).

3 A similar exemption is also available in Section 68(1) of the *Canada Business Corporations Regulations* and Section 29.2(3) of Ont. Reg. 62 under the OBCA.

Considerations in Corporate Transactions

The following paragraphs set out certain other considerations that we have identified that arise in merger and acquisition transactions and other corporate transactions where a soliciting dealer group is formed, from the perspectives of each of (i) the directors and officers of the issuer, (ii) the bidders or dissident shareholders, and (iii) the broker-dealers.

Directors and Officers

The payment of soliciting dealer fees in the context of corporate transactions generally does not give rise to the same fiduciary duty concerns as it does in contested director elections. Although M&A transactions often give rise to conflicts of interest and entrenchment considerations, law and practice have evolved to the point where actual or perceived conflicts are typically well managed through the use of independent committees, independent financial advisors, independent legal counsel and the delivery of fairness opinions. In this way these transactions can be distinguished from contested director elections. As result, provided that the directors have complied with their statutory and common law duties, deference should be given to their business judgment, including any decision to compensate broker-dealers to facilitate tenders or votes in favour of the proposed transactions.

However, the payment of soliciting dealer fees by an issuer may have the potential to create a conflict of interest and cast doubt as to whether it is in the best interests of the issuer to use corporate resources to secure tenders or votes for a particular transaction in the context of certain types of corporate transactions. Such concerns could arise in a contested corporate transaction where fees are only paid to broker-dealers who secure tenders to a specific take-over bid or votes in favour of a particular plan of arrangement favoured by management in the face of a competing transaction or where shareholders oppose the transaction proposed by management. In these circumstances, the payment of soliciting dealer fees in support of management's favoured transaction may be inappropriate because of its potential to undermine the integrity of the voting or tendering process.

While certain contested transactions may give rise to concerns similar to those that arise for issuers in the context of contested director elections, we are of the view that such cases will be fact-specific and depend on a multitude of factors, including the nature of and circumstances surrounding the transactions in question and the process and protections implemented by the issuer and its directors to review, evaluate and make recommendations concerning the transactions. Accordingly, we do not believe a bright-line rule or blanket test concerning soliciting dealer arrangements should be applied in the context of corporate transactions. Rather, we are of the view that securities regulatory authorities and/or Canadian courts have the ability to intervene, and should intervene, on a case-by-case basis if soliciting dealer arrangements are used in a particular transaction in an abusive or oppressive manner, or otherwise give rise to public interest or public policy concerns.

In cases where concerns may arise, we are of the view that such concerns could, absent special circumstances, be overcome if an issuer is trying to increase retail shareholder participation by structuring the soliciting dealer arrangements so that the broker-dealers would receive fees for any and all tenders or votes secured from their clients.

We are also of the view that an issuer that enters into soliciting dealer arrangements should be required disclose the full particulars of the arrangements, including the fees payable to the broker-dealers and the circumstances in which such fees will be paid, in a timely fashion. We believe that adequate framework for such disclosure currently exist under NI 51-102 and National Instrument 62-104 – *Take-Ove Bids and Issuer Bids* (NI 62-104). However, as with contested director elections, we are supportive of the CSA providing guidance regarding the content and timing of such disclosure to ensure shareholders have sufficient time and information to make a fully-informed decision.

Bidders and Dissident Shareholders

There are currently no barriers to bidders (including hostile bidders) or dissident shareholders entering into their own soliciting dealer arrangements. Given that these arrangements originated in the context of merger and acquisition transactions, the formation of a soliciting dealer group is a tool that has long been available to bidders in their efforts to gain control of an issuer. Although our experience is that dissident shareholders are far less likely to enter into soliciting dealer arrangements, the considerations arising in the context of bidders and dissident shareholders are similar and primarily relate to conflicts of interest for the broker-dealers. Obviously, the concerns regarding breach of fiduciary duty, entrenchment and use of shareholder resources do not apply here.

As a result, soliciting dealer arrangements entered into by a bidder or dissident shareholder should be assessed on a case-by-case basis in light of their potential to undermine the voting or tendering process. There may be particular types of corporate transactions, such as competing contests for control of an issuer or where a dissident opposes a particular transaction proposed by management of the issuer, where the use of soliciting dealer arrangements by a dissident or bidder may give rise to concerns or have the potential for abuse. However, as stated above, we are of the view that this will depend on the particular facts and circumstances of each case. Accordingly, securities regulatory authorities and/or Canadian courts should rely on their respective jurisdictions to intervene if and when soliciting dealer arrangements are used by dissidents or bidders in an abusive manner, or otherwise give rise to public interest or public policy concerns.

In any case, bidders and dissident shareholders should be held to similar disclosure standards as issuers in respect of their soliciting dealer arrangements.

Broker-Dealers

Many of the considerations previously expressed in this comment letter regarding the participation of broker-dealers in soliciting dealer arrangements in the context of contested director elections also apply in corporate transactions. More specifically, broker-dealers who accept compensation to facilitate tenders to a take-over bid or votes only in favour of one side of a contested transaction may put themselves in a position of conflict of interest *vis-à-vis* their clients. This gives rise to public interest concerns given that many retail shareholders rely on their broker-dealers as trusted advisors for unbiased advice.

The financial incentives created by the fees payable under soliciting dealer arrangements have the potential to unduly influence broker-dealers and prevent them from providing their clients with unbiased advice based on their own objective analysis of the proposed transactions. This is particularly the case in contested transactions where broker-dealers are compensated only for shares tendered or votes cast in favour of a particular transaction. Broker-dealers must therefore evaluate in the circumstances the materiality of any conflicts of interests and whether they can adequately address such conflicts of interest in light of their professional obligations. If broker-dealers are of the view that such conflicts of interest can be adequately addressed in accordance with IIROC Rule 42 and related guidance, we believe that at minimum they should be required to clearly disclose that they will be receiving a fee (and the particulars thereof) if their clients act on their advice.

Although the proxy solicitation concerns previously raised are not directly applicable in the context of take-over bids, they apply in all corporate transactions that require shareholder approval, including merger and acquisition transactions that proceed by way of plan of arrangement. Accordingly, broker-dealers participating in soliciting dealer arrangements must ensure that the issuer, the bidder or the dissident shareholders that formed the soliciting dealer group have included the prescribed disclosure in their proxy circular. Otherwise, all correspondences between the broker-dealers and their clients regarding the voting of shares in respect of the proposed transactions will be in violation of the proxy solicitation rules.

Conclusions and Recommendations

We would be supportive of limiting the use of soliciting dealer arrangements in the context of contested director elections to scenarios where the issuer or the dissident shareholder forming the soliciting dealer group agreed to pay the soliciting dealer fees to broker-dealers irrespective of how their clients vote. We believe that this is warranted given the fiduciary duty and entrenchment concerns that arise in connection with issuer's use of soliciting dealer arrangements in contested director elections. While the same concerns do not apply with respect to a dissident shareholder, this approach would ensure that the integrity of the voting process is maintained as broker-dealers would not be in a potential position of conflict of interest *vis-à-vis* their clients and could provide them with unbiased advice.

However, we do not believe that a similar approach is warranted in respect of the use of soliciting dealer arrangements by issuers, bidders or dissident shareholders in the context of corporate transactions. While there may be scenarios where the use of soliciting dealer arrangements would give rise to fiduciary duty and conflict of interest concerns, or concerns that the voting or tendering process might be undermined, we are of the view that such scenarios are better addressed by securities regulatory authorities and/or Canadian courts on a case-by-case basis. In our view, these cases are most likely to arise in the context of certain types of contested corporate transactions, and will depend on the particular facts and circumstances of each case.

Given the approaches to disclosure taken in the Enercare, Agrium and Liquor Stores proxy contests, we believe that at a minimum the CSA should issue a staff notice providing market participants with guidance in respect of the disclosure obligations under NI 51-102 and NI 62-104. More specifically, we believe that an issuer, a bidder, or a dissident shareholder that forms a soliciting dealer group should be required to immediately issue and file a press release announcing its formation and disclosing the

full particulars of the soliciting dealer arrangements, including the amount of the soliciting dealer fees and any conditions associated with their payment. In addition, broker-dealers participating in a soliciting dealer group formed in connection with a matter to be considered at a shareholders' meeting should be advised that they will be in breach of the proxy solicitation rules unless the party who formed the soliciting dealer group includes the requisite disclosure in its proxy circular or an amendment thereto prior to the broker-dealers reaching out to their clients. We also believe that the CSA should provide guidance regarding the timing and content of the disclosure to be provided in respect of soliciting dealer arrangements to ensure that shareholders have sufficient time and information to make a fully-informed decision on that basis.

Finally, we believe that heightened responsibility should be placed on broker-dealers to assess whether they can adequately address any material conflicts of interest that might arise as a result of their participation in a soliciting dealer group in light of their professional obligations under IIROC Rule 42 and related guidance. Given the subjective nature of this analysis, we would be supportive of the CSA or IIROC providing broker-dealers with additional guidance in respect of how they should go about this analysis. If broker-dealers are of the view that any such conflicts of interest are not material or, if they are, can be adequately addressed, we believe that at minimum they should be required to clearly disclose to their clients that they are participating in a soliciting dealer group and will receive a fee if their clients vote their shares in a particular fashion or tender their shares to a specific take-over bid. The amount of the consideration to be received by the broker-dealers and any conditions associated with their payment should also be clearly disclosed to clients to ensure they are in a position to make an informed decision. We would also be supportive of the CSA or IIROC providing broker-dealers with guidance on how they should fulfill their disclosure obligations.

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The following partners at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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Yours very truly,

Davies Ward Phillips & Vineberg LLP