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July 9, 2015

BY 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
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

c/o

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

Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
P.O. Box 246, 22nd Floor
800 Victoria Square
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Dear Sirs/Mesdames:

Re: Request for Comments - Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) and Proposed Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (NP 62-203)

We are pleased to submit this letter in response to the request for comments of the Canadian Securities Administrators (the “CSA”) published March 31, 2015 on the proposed amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (collectively, the “**Proposed Bid Amendments**”).

The CSA note that the Proposed Bid Amendments are intended to enhance the quality and integrity of the take-over bid regime and rebalance the current dynamics among

offerors, offeree issuer boards of directors (offeree boards), and offeree issuer security holders by (i) facilitating the ability of offeree issuer security holders to make voluntary, informed and co-ordinated tender decisions, and (ii) providing the offeree board with additional time and discretion when responding to a take-over bid.

In order to achieve the above-stated objectives, the CSA has proposed a (i) Minimum Tender Requirement, (ii) 10 Day Extension Requirement, and (iii) 120 Day Requirement (each as defined in the Proposed Bid Amendments). While we generally support the Minimum Tender Requirement and the 10 Day Extension Requirement given that they address the coercive aspects of the current tender process, namely the collective action problem and pressure to tender, we have concerns about the proposed extension of the minimum bid period by 85 days.

In that regard, while the CSA are proposing to rebalance the current bid dynamics, we note that the CSA are not proposing to amend National Policy 62-202 (“**NP 62-202**”) which recognizes that “take-over bids play an important role in the economy by acting as a discipline on corporate management and as a means of reallocating economic resources to their best uses”. Accordingly, for the reasons expressed below, we support extending the minimum bid period from the current 35-day period, but are concerned that extending the period to 120 days could have consequences that conflict with the principles enunciated in NP 62-202.

As we note in our 2015 Canadian Hostile Take-Over Bid Study (available at <http://www.fasken.com/hostile-takeover-bids-canada/>), which analysed all 143 unsolicited take-over bids for legal control of a Canadian-listed public company during the ten-year period ended December 31, 2014:

1. A sale of the company was by no means inevitable: of the 127 “first-mover” bids, approximately 55% were successful, while 28% of the targets of first-mover bids remained independent twelve months after the initiation of the bid. We believe that this finding may call into question the degree to which the current dynamics among offerors, offeree boards, and offeree issuer security holders need to be rebalanced.
2. The current 35-day period was insufficient to allow most competition to emerge (as competition emerged an average of 41 days after the initiation of a first-mover bid and almost two-thirds of those competing transactions emerged 35 days or more after the initiation of the bid); however, it remains to be seen whether a 120-day period strikes the balance needed to ensure sufficient time for a board to respond to the bid while not dissuading bidders from coming forward in the first place.

3. Competition cut a bidder's odds of success in half and resulted in a 69% increase, on average, in the final premium offered by a hostile bidder. The potential for increased competition inherent in a longer bid period and the impact that may have on the potential purchase price could be expected to cause bidders to carefully evaluate whether to proceed with a bid at all.

Our concerns regarding the significant extension of the minimum bid period are heightened by the fact that the CSA are not proposing to provide guidance concerning their position on the potential use of shareholder rights plans to further extend the bid period or otherwise impede unsolicited bids. While we would anticipate that the CSA would generally take an unfavorable view of such action, we believe that market participants would benefit from a clear articulation of the CSA's position on this issue.

Given the increased risks and potential costs to bidders (including the costs of maintaining financing commitments for an extended period or, in the case of a share exchange bid, the risk of extended exposure to market volatility) if the 120 Day Requirement is enacted -- particularly in the absence of additional guidance on the CSA's position on rights plans -- we are concerned that we may well witness a decrease in the number of unsolicited bids, and perhaps of greater importance, a weakening of the very threat of a bid, creating an environment in which the economic benefits of take-over bids, which are expressly recognized by the CSA, are less likely to be realized.

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Thank you for this opportunity to comment on the Proposed Bid Amendments. Note that this letter represents the general comments of the authors (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client. Should you wish to discuss any of our comments, please contact Richard Steinberg (416.865.5433), Aaron Atkinson (416.865.5492) or Bradley Freelan (416.865.4423).

Yours truly,

(Signed) "Richard Steinberg"
Richard Steinberg

(Signed) "Aaron Atkinson"
Aaron Atkinson

(Signed) "Bradley Freelan"
Bradley Freelan