

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

June 11, 2018

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

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

FAIR Canada is pleased to respond to CSA Staff Notice 61-303 and Request for Comment - *Soliciting Dealer Arrangements*.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. General Comments

- 1.1. We agree with staff of the Canadian Securities Administrators (CSA) that soliciting dealer arrangements raise a number of securities regulatory issues. We trust that the information and feedback sought by CSA staff in this Notice and Request for Comment will be of assistance in determining the appropriate additional rules and guidance for these types of arrangements. However, we do not believe further consultation is required with respect to the use of success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors of reporting issuers in proxy solicitations, such as EnerCare Inc., TELUS and Mason, JANA Partners and Agrium and Liquor Stores and PointNorth. The "vote buying" practices used in these proxy solicitations by boards of directors run afoul of dealer conflict of interest rules, raise concerns under proxy solicitation requirements, undermine the integrity of the securityholder voting process and require immediate remedial action by the CSA to prohibit their use.
- 1.2. We note that this Staff Notice and Request for Comment focuses on investment dealers, dealing representatives and issuers. We believe that the interests of retail investors and clients need to be part of the discussion of these practices going forward.
- 1.3. Any consideration of the Investment Industry Regulatory Organization of Canada (IIROC)'s Rule 42: *Conflicts of Interest*, in the context of success-only "VOTE FOR" soliciting dealer arrangements by boards of directors, must focus on the interests of the client. We believe that success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors in proxy solicitations present a material conflict for dealing representatives under Rule 42 which must be avoided and can not be adequately mitigated or managed, or resolved by disclosure alone. The need for these types of material conflicts to be avoided is increased by the lack of any standards, such as suitability, applicable to voting recommendations (in contrast to recommendations to purchase, sell, exchange or hold securities) by dealing representatives, leaving aside the question of their qualifications and level of proficiency for developing and making governance voting recommendations to clients.
- 1.4. In addition to the IIROC material conflict of interest issue, success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors in proxy solicitations raise concerns under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)'s proxy solicitation requirements regarding solicitation disclosure (sections 3.3 and 3.4 of Item 3 of Form 51-102F5-Information Circular) (e.g. Agrium and Liquor Stores information circulars) and with respect to

the breadth of NI 51-102's definition of "solicit" in relation to investment firm and dealing representative vote recommendation activities. We urge the CSA to clarify that by receiving commission or remuneration for soliciting votes, investment firms and dealing representatives would run afoul of the proxy solicitation requirements, as is the case under Rule 14a-2 of the United States Securities Exchange Act of 1934.

- 1.5. In conclusion, FAIR Canada requests the CSA to take immediate remedial action to prohibit the use of success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors of reporting issuers in proxy solicitations.

We thank you for the opportunity to provide our comments and views in this response. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at 647-256-6693/frank.allen@faircanada.ca, Marian Passmore at 647-256-6691/marian.passmore@faircanada.ca or Samreen Beg at 647-256-6692/Samreen.beg@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights