Canadian Oil Sands

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VIA 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
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Attention: The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8
Fax: (416) 593-2318
E-mail: comments@osc.gov.on.ca

Attention: Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
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Montreal, QC H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Re: Proposed National Instrument 62-105 *Security Holder Rights Plans* (the "Proposed Rule") and Proposed Companion Policy 62-105CP *Security Holder Rights Plans* (the "Proposed Policy") (collectively, the "Proposed Rules")

Canadian Oil Sands Limited ("**COS**") appreciates the efforts of the Canadian Securities Administrators (the "**CSA**") to regulate security holder rights plans ("**Rights Plans**") in a way that emphasizes board and shareholder discretion. COS also appreciates the opportunity to be a part of the CSA's regulatory reform process.

COS holds a 36.74 per cent working interest in the Syncrude joint venture, providing a pure investment opportunity in Syncrude's crude oil producing assets. Located near Fort McMurray, Alberta, Syncrude Canada operates large oil-sands mines and an upgrading facility that produces a light, sweet crude oil on behalf of its joint venture owners. COS' primary business is its ownership in Syncrude and the marketing and sale of crude oil derived from such ownership.

COS has the following comments on the Proposed Rules:

Issues with the Current Regulatory Framework

- Provincial securities commissions will generally intervene to "cease trade" a Rights Plan within 45-60 days after the launch of an unsolicited take-over bid. This is beyond the 35 day minimum tender period for a take-over, but still not enough time for a board of directors to effectively respond to an unsolicited take-over bid and provide shareholders with sufficient information about the bid to make a fully informed decision, especially given the fact that a board will be preparing to defend a Rights Plan at a securities commission hearing at the same time that is responding to the unsolicited bid. Moreover, hostile bidders are aware that securities commissions will generally cease trade a Rights Plan within the above noted timeframe and can use this to their advantage in negotiations with the target company.

- The collective action issue discussed in the CSA consultation paper means that shareholders will often feel pressured to tender to an unsolicited take-over bid that they do not support.

- In the past few years, provincial securities commissions have had conflicting views as to when a Rights Plan should be cease traded or whether a Rights Plan should be cease traded at all.

The Proposed Rules

The Establishment of a Regulatory Framework

We agree that a Rights Plan adopted by a board of directors should generally be allowed to remain in place provided that a majority of shareholders approve the Rights Plan. We also believe that the establishment of a regulatory framework for Rights Plans in all CSA jurisdictions will help to provide greater market certainty.

Rights Plan Adopted in the Face of a Take-Over Bid

A board needs adequate time to assess and respond to an unsolicited take-over bid and provide shareholders with sufficient information about the bid. Under the Proposed Rules, a company will no longer have to prepare to defend a Rights Plan at a securities commission hearing. However, it still likely will be in a proxy contest with the unsolicited bidder to approve or terminate the Rights Plan. Accordingly, we believe that 120 days will give a board sufficient time to respond to an unsolicited bid, ensure that shareholders have sufficient information regarding the bid and call a shareholders' meeting involving a proxy contest. If the CSA determines that a range is more appropriate, we would suggest a range of 120 to 180 days.

Rights Plan Adopted in the Absence of a Take-Over Bid

We believe that shareholder approval should be required within 120 days even if a hostile bid has not been made.

Regulatory Consistency

The CSA consultation paper indicates that it is the anticipation of the CSA that, under the Proposed Rules, securities commissions will only determine whether a Rights Plan should be cease traded in limited circumstances where the substance or spirit of the Proposed Rules are not being complied with or there is a public interest rationale for intervention. We believe that the Proposed Rules should provide some guidance on when such intervention should take place. This will reduce the likelihood of inconsistent regulatory decisions related to Rights Plans and result in greater market certainty.

Annual Shareholder Approval

We are of the view that the ultimate decision about whether to approve or maintain a Rights Plan should be made by shareholders so we agree with the annual shareholder approval requirement.

Shareholders' Meetings

Depending on when an unsolicited offer is made, a company who chooses to submit a Rights Plan to shareholders at each annual shareholders' meeting will potentially have significantly longer than 90 days (or other number that may be in the final rules) to respond to an unsolicited take-over bid.

Requisitioned Shareholders' Meeting

Under the *Business Corporations Act* (Alberta) (the "**ABCA**"), shareholders holding 5% or more of a company's shares can requisition a shareholders' meeting to vote on a Rights Plan. A board must call a meeting within 21 days of receipt of the requisition, but the ABCA does not specify when the meeting must be held. There will likely be litigation regarding the timing of shareholders' meetings requisitioned by shareholders to address a Rights Plan. We suggest that the Proposed Rules address the timing of such meetings to avoid litigation over the issue.

Shareholders' Meeting Called by Court

Under the ABCA, a shareholder can make an application to a court to call a shareholders' meeting. A court may order a meeting to be called, held and conducted in a manner that it thinks appropriate. Hostile bidders will be able to apply to a court to call a shareholders' meeting to address a Rights Plan. We believe that the Proposed Rules need to provide the CSA's views on the appropriate timing of court called shareholders' meetings and the timeframe should be the same as for requisitioned shareholders' meetings. Courts have recognized the expertise of securities commissions in the regulation of the capital markets. If the Proposed Rules speak to the timing of requisitioned and court called shareholders' meetings to address a Rights Plan, then the courts may defer to the CSA's views so as to provide commercial certainty.

Material Amendments

Under the Proposed Rules, material amendments are dealt with in the same way as the adoption of a new Rights Plan. We agree with this approach. However, the Proposed Rules provide limited insight into what the CSA considers a material amendment. The Proposed Policy simply states that a material amendment includes an amendment "which would reasonably be expected to affect the decision of a target company security holder to approve or not approve the rights plan." The Proposed Rules should provide more guidance to issuers on what the CSA considers a material amendment.

Thank you for the opportunity to comment on the Proposed Rules.

Yours truly,

CANADIAN OIL SANDS LIMITED

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SMW/ss

c. Trudy M. Curran, Senior Vice President, General Counsel & Corporate Secretary
Ryan M. Kubik, Chief Financial Officer
Wesley R. Twiss, Chairman of the Audit Committee