

March 3, 2021

Attention:

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Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Dear Sir/Madam:

RE: Response to CSA Consultation Paper 25-403 *Activist Short Selling*, Request for Feedback

Northern Dynasty Minerals Ltd. (“NDM” or the “Company”) is a publicly traded company on the Toronto Stock Exchange and the New York Stock Exchange under the ticker symbols NDM and NAK respectively. NDM is currently developing the world-class copper-gold-silver-molybdenum-rhenium project in Alaska referred to as the Pebble Project. The Pebble Project is currently in the US federal permitting process.

In recent years, NDM has been the target of two of the so-called short and distort campaigns by firms that, in our opinion, disseminated misrepresentations into the marketplace about the Pebble Project with a goal to affect negatively NDM’s share price. In addition, it has long been NDM management’s belief that through shorting campaigns, the Company has been targeted by organized high frequency day traders who first ‘spoo’ or ‘pump up’ the stock price through social media platforms and then short the stock. What follows is a switch to negative social media and targeted negative media coverage, all designed to devalue the share price for financial benefit to those who are shorting the

stock. In NDM's case, most of the organized shorting activity has focussed on the US listing but also impacts negatively the Canadian listing.

The Company recognizes the need for short selling by legitimate parties and its value in the marketplace as a way to provide liquidity and price discovery. However, behaviours by known short and distort actors have a negative impact to the market overall and unfairly single out companies that do not align with their beliefs or financial goals. These actors produce negative reports with sufficient caveats to mitigate exposure to liability in the public statements that are made about the companies that they are shorting. The company itself typically cannot respond fully to the allegations made and in some cases, are exposed to potential litigation through shareholder class action proceedings if the company's share price falls. As far as the Company is aware, there is no real recourse available to hold those accountable who publicly disseminate false or misleading statements about a company.

NDM believes that those who choose to short a company's stock should be subject to more stringent regulation, which are noted in our responses below to the specific questions posed in the Ontario Security Commission's (the "OSC") Consultation Paper 25-403 *Activist Short Selling* (the "Consultation Paper"):

1. *What is your perception about activist short sellers? Please describe the basis of that perception.*

NDM is aware of activist short selling and the Company's perception of this activity is negative, based on the Company's own experience of having been the target of two separate short and distort campaigns, launched by Kerrisdale Capital Management LLC in February 2017 and by J Capital Research in September 2020. In one of these campaigns, the Company's share price never recovered to its levels prior to launch of the short and distort campaign.

Both of these campaigns inflicted damage the Company's share price and in the Company's view, its reputation.

Kerrisdale Capital Management LLC

On February 14, 2017 a short and distort campaign was launched by Kerrisdale Capital Management LLC ("Kerrisdale"), an investment management firm based in New York, USA. At the time, Kerrisdale disclosed publicly that it was short on NAK shares. Allegations in the Kerrisdale report¹ included:

- The Pebble Project, as one of the largest copper and gold deposits in the world, was "worthless", despite other mining companies in the region profitably mining lower grade ore;
- Former major mining companies involved with the Pebble Project, some of whom spent US\$600 million on the project, left it based on the view that the project was worthless;
- The Project's challenges from government regulators, namely the US Environmental Protection Agency ("EPA") are deserved, despite being based on sham science and refuted by an independent investigation²; and,
- Reliance on "anonymous" sources to back their false claims. These sources did not disclose any technical credentials and Kerrisdale itself did not put itself out as a mining company.

In early 2017 leading up to the release of the Kerrisdale short and distort report (the "Kerrisdale Report"), the Company's stock was trending up on positive news that the Company and the EPA were in mediation with respect to rescinding the EPA's 2014 pre-emptive veto of the Pebble Project and a recently closed financing³ in addition to positive coverage in

¹ Kerrisdale's full report is available at <https://www.kerrisdalecap.com/wp-content/uploads/2017/02/Northern-Dynasty-Minerals-NAK.pdf>

² See Company news release dated October 6, 2015.

³ See Company news releases dated October 27, 2016 and January 26, 2017.

the US national media.⁴ Daily volumes of the stock were also strong, making it an interesting target for a short seller. Figures 1 and 2 represent NAK's average daily volume and share price movement in the months leading up to the publishing of the Kerrisdale Report⁵:

Figure 1. NAK Average Daily Volume (November 1, 2016 – February 13, 2017)

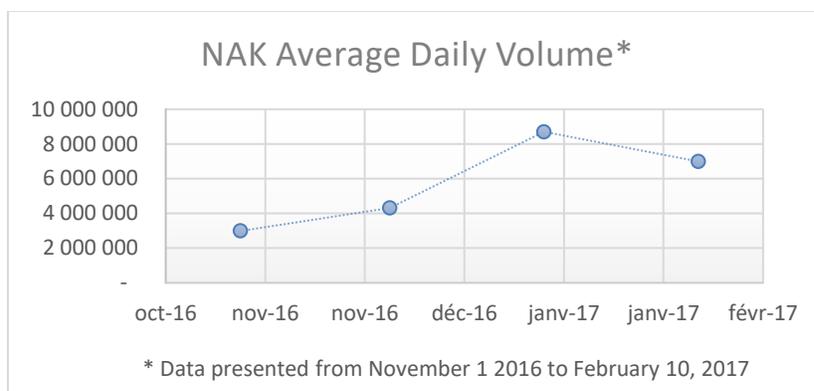
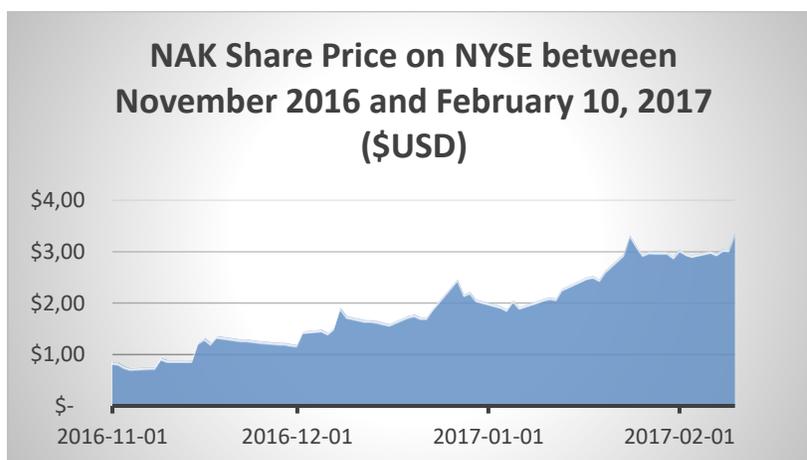


Figure 2. NAK Share Price prior to release of Kerrisdale Report



Subsequent to the surprise publishing of the Kerrisdale Report on February 14, 2017, the Company's share price fell significantly, as evidenced by Figure 3 below. From February 13, 2017 to end of that month, the closing share price moved from US\$3.18 to US\$1.58, and average daily volumes were just under 24 million shares traded during that same period⁶. For the remainder of 2017, the NAK share price never fully recovered. Overall, the Company's market capitalization dropped from US\$925.7 million to US\$460.0 million⁷. It is reasonable to assume that those who shorted the Company's stock profited significantly from this share movement at the expense of those who had their shares

⁴ Preceding the Kerrisdale Report, the Company's stock was referred to on various investment focussed shows in the United States.

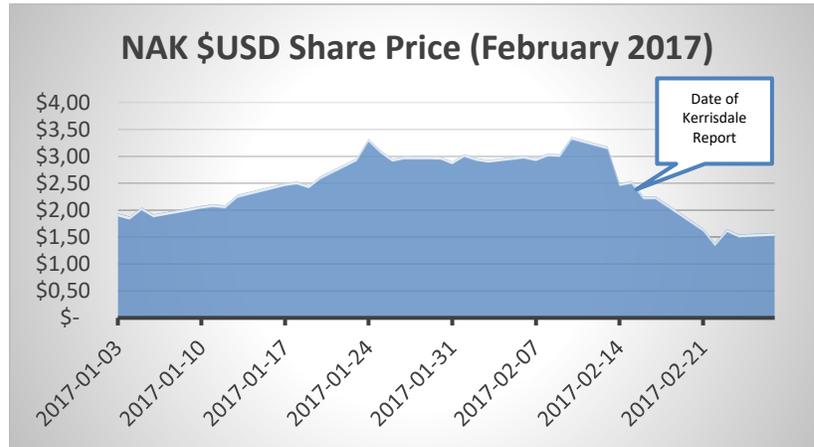
⁵ Source: Yahoo Finance.

⁶ Ibid

⁷ Based on 291.1 million common shares outstanding in February 2017 multiplied by the share prices on February 13, 2017 and February 27, 2017 respectively.

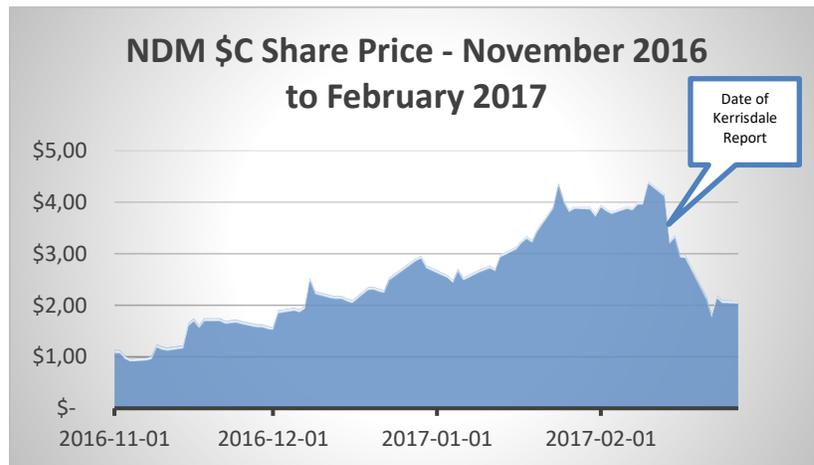
“walked down” through having their stop-loss provisions triggered or simply sold their position due to the uncertainty caused by the negative news and downward momentum of the share price.

Figure 3. – NAK Share Price Subsequent to Release of Kerrisdale Report



Similarly, in Canada NDM shares had experienced an increasing share price through the later part of 2016 and through early 2017 up to the publishing of the Kerrisdale Report, reaching a high closing share price of \$4.41 on February 10, 2017 before falling to \$2.09 to close out the month (see Figure 4).

Figure 4. – NDM Share Price from November 1, 2016 to February 28, 2017



On February 15 and 17, 2017, two shareholder class action lawsuits were filed against the Company in US federal courts with a third class action filed thereafter. The complaints appeared to rely on claims made in the Kerrisdale Report and alleged damages to a class of investors who purchased shares in the Company prior to its publication and alleged liability for losses. Individuals at the Company were also named as defendants under the control person liability section of the US Exchange Act. While all of the class actions were eventually dismissed, significant Company resources were incurred to fight these litigations. For the entities involved in the short and distort campaign, there was no culpability from a legal perspective.

It is also curious to the Company that the law firms who organized the shareholder class actions were able to mobilize their actions in such a short time period from the date of publishing of the Kerrisdale Report. While there is no empirical evidence to suggest collusion between the Kerrisdale Report and the filing of the subsequent class actions, the timing of the class action raised concerns within the Company at the time.

J Capital Research

On September 9, 2020, J Capital Research (“JCap”), a Beijing based stock-research company, launched a short and distort report against the Company. Similar to the Kerrisdale Report, the published report (the “JCap Report”)⁸ made significant allegations that were not supported by facts or substantiated. These included:

- The Pebble Project will lose money;
- Capital costs for the project have been understated; and,
- The mine plan *intentionally* targeted the low-grade portions of the deposit.

The JCap Report makes these allegations based on making inferences or simply misrepresenting information that the Company provided to US regulators under the federal permitting process. At no time were representatives of the Company asked for comment on the information published in this report.

JCap’s claims were heavily caveated. The JCap Report relied on cautionary language and that readers should, “*assume that as of the publication date of our reports and research, J Capital Research USA LLC may benefit from short position a client has in all stocks...and therefore stands to realize significant gains in the event that the price...declines.*”⁹

The Company’s share price escaped relatively unscathed although from a reputation perspective, the report was damaging to NDM, its Board of Directors and executive team.

Social Media Campaigns

Social media forums allow shareholders, who appear to be mainly retail shareholders, comment on particular stocks that they hold in their portfolios as part of a larger community of investors. Through posting about a particular stock, an account holder can express their views (positive or negative) on a stock’s performance, recent news or upcoming milestones.

The Company has noticed in some cases that the stock gains momentum when there are positive comments made on the various social media forums that cover the Company. For example, in July 2020 the Company was made aware that the publishing of a Federal Environmental Impact Study (EIS), a significant milestone, was to be published by the US Army Corps of Engineers on July 24, 2020. Given the materiality of this information, the Company made the release date public once the timing had been confirmed.¹⁰ The EIS was viewed by the mining industry generally and the Company as a positive document. This should have been received positively by the financial markets as well. As expected, the markets reacted favourably. On July 6, 2020, NDM closed at \$1.67. From July 7, 2020 through July 23, 2020 the share continued its climb, closing at \$2.23 on significant stock volume. And then, on the eve of the EIS being published, social media began to speculate that the Company would be the target of a short report. A significant number

⁸ The JCap Report is available at https://northerndynastyminerals.com/site/assets/files/4862/september_10-2020.pdf

⁹ See page 1 of the JCap Report.

¹⁰ See Company news release dated July 15, 2020.

of negative social media posts followed. Over the subsequent trading sessions and despite what was considered a positive EIS, the Company's shares fell from a high of \$2.34 to a close of \$1.62 on July 31, 2020¹¹ on higher than normal trade volumes. The short report did not materialize until much later, when the JCap Report was released in September 2020, but the damage to the stock had been done, and the Company's view is that this was accomplished through social media.

In other cases, trading activity has also spiked unexpectedly when there is no pending news about the Company. Figure 5 below provides a table of significant outlier trading days in 2021¹² for the Company and when there was no significant news event that accompanied the higher volume.

Figure 5 – High Volume NAK Trading Days in 2021

Trading Day	NAK Shares Traded	NAK \$USD High for Day	NAK \$USD Closing Price	Avg. Daily Volumes - Previous Month
2021-01-13	130,814,100	0.69	0.60	14,785,095
2021-01-18	123,418,300	0.73	0.60	14,785,095
2021-02-01	270,920,100	0.84	0.75	46,062,426
2021-02-10	194,872,300	0.98	0.94	46,062,426
2021-02-11	149,402,700	1.15	1.00	46,062,426

These trading volumes are not normal. In most cases social media activity around these high volume dates increased, resulting in a short spike in price early in the trading session, followed by the stock price closing at a much lower price. Social medium forums identify when a shorting activity is occurring in real time, and actively work to counter it as a trading day unfolds while those aligned with the short sellers will 'bash' the stock in the hopes of keeping the price down. It is unclear whether those posting to these forums as retail investors at various levels of sophistication, are who they put themselves out to be.

2. *Can you give examples of conduct in activist short selling Campaigns that you view as problematic?*

Lack of Regulatory Oversight of Short Sellers

Public companies are subject to the oversight of a number of regulatory bodies. Companies in the public domain must ensure compliance with securities acts, sometimes in multiple jurisdictions, and finance teams are tasked with ensuring that their public disclosures meet the various financial reporting standards. Company executives must certify the quarterly and annual financial statements and face real consequences for errors or misstatements. Further, mining issuers are subject to National Instrument 43-101 whereby "Qualified Persons" must certify any technical data released publicly by a company. These certifications require significant resources and time to prepare.

Yet it seems that activists involved in short selling campaigns are free to make public representations on a company that may or not be factual, as long as it is made it clear that those views are opinions only and their statements cannot be relied on.

¹¹ Source: Yahoo Finance.

¹² Ibid

Both the Kerrisdale Report and JCap Report provided cautionary language in their reports. JCap's own home page¹³ includes the following warning to those who land on the website:

"Be warned. We are activists, usually on the short side. We are biased. We do our best to find and present facts, based on extensive primary research using public sources. But we will profit if these stocks decline or, when we are long, rise in value. We do not offer advice on how to trade a stock. We present our views."

The Kerrisdale Report includes a legal disclaimer nearly one and half pages long, which includes wording such as:

"All content in this report represents the opinions of Kerrisdale. The Authors have obtained all information herein from sources they believe to be accurate and reliable....All expressions of opinion are subject to change without notice, and the Authors do not undertake to update or supplement this report or any information contained herein...The Authors' opinions and estimates constitute a best efforts judgment and should be regarded as indicative, preliminary and for illustrative purposes only."

Companies who are targeted in a short selling campaign cannot respond to all of the allegations raised by the short seller. Constraints in a company's ability to respond include lack of resources, legal considerations and regulatory considerations when making a response. A regulatory framework does not have to be as onerous as what is applied to filers. It could be as simple as a regulatory body issuing a statement cautioning investors not to rely on a short and distort report if it contains misleading information. Specifically targeting a short and distort report would likely destroy its credibility with the investing public. Whether a regulatory body would have jurisdiction to require a misleading report to be removed or amended is unlikely, but could be explored.

Borrowing of Shares to Cover Short Positions

As noted in the Consultation Paper, short sellers may borrow shares to cover their short position. It is the Company's understanding that banks, brokers and other lending institutions will loan a company's shares to short sellers to cover their positions, but it is the Company's understanding that retail investors with margin trading accounts may also have their shares borrowed. This seems counterintuitive to the investor's objective to see their investment increase in value. A short seller is borrowing these same shares with the view that the share price should be decreasing in value. At the very least, retail investors should be advised if their shares have been borrowed to cover a short sale and have the option to 'opt out' of having their shares borrowed to cover short positions. Currently, the only way retail investors can achieve this is by moving their share portfolios out of margin trading accounts and into cash trading accounts. While some will argue that this borrowing mechanism is needed to maintain liquidity in the markets, the OSC should consider some form of regulation. For example, insiders of companies may have their shares borrowed, which may be contrary to the company's corporate governance policies.

The practice of naked short selling, although illegal in Canada, should be considered and identified to the extent that it exists through the regulation of brokers and those involved in lending out shares to short sellers to cover their positions. Regulators should start to ask questions when the short position in a Company's stock is more than the issued and outstanding shares¹⁴. The Company raises the question of whether regulators should be required to disclose, in a more fulsome manner, the extent to which shares are borrowed to cover short sales.

¹³ See www.jcapital.com.

¹⁴ See CNBC article, "<https://www.cnbc.com/2021/01/29/gamestop-short-sellers-are-still-not-surrendering-despite-nearly-20-billion-in-losses-this-year.html>"

Lack of Real Time Short Sale Information

As a Company, it is difficult to obtain real time information on short sales. Reports are typically reported semi-monthly, often 1 week or more after a particular trading session. There is also conflicting information on the percentage a stock is short. It would be beneficial to have access to real time information.

Information on the number of failed trades on a daily basis would also be a benefit to the market place and could help identify trends.

3. *Given the focus of the available data is on prominent activist short sellers, what is your view regarding less prominent activist short sellers or pseudonymous activist short sellers targeting Canadian issuers? How can they be identified? Is there any evidence that they are engaging in short and distort campaigns?*

There is a general view that Canadian issuers are targeted due to the current regulatory framework in Canada. Further, it is possible that companies with cross listings and high trading volumes such as NDM make easy targets, although the Company does not have any empirical evidence to support this claim.

The Company recognizes the challenges to identify activist short sellers, especially those that use social media or other online forums. The only practical way to identify short sellers would be through their trading activity, but there are privacy concerns in accessing this research.

With respect to evidence of short selling activity, some short sellers are open regarding their activity on social media. Whether they are actually engaged in short selling activity is difficult to prove. Even more difficult to prove is whether there is a coordinated effort amongst short sellers in a short and distort campaign. Further, steps should be taken with the various social media forums (Stocktwits, Stockhouse bullboards, Twitter) to preserve information so that it can be reviewed later.

4. *What empirical data sources related to Campaigns should we consider?*

The Company would be interested in the following sources of empirical data:

- Real time, live data on short selling activity be identified as it is occurring for possible investigation/follow-up by IIROC, similar to compliance surveillance that triggers when a company's stock moves upwards unexpectedly;
 - Regular reporting by those institutions that lend their shares to allow short sellers to cover their short positions;
 - Daily failed trade data; and,
 - Disclosure by the holder of a short position once a certain threshold has been met (i.e. once X% of the float has been met)
5. *In 2019, there was a large drop in the number of Canadian issuers targeted by prominent activist short sellers compared to the year before. Are there market conditions or other circumstances that in your view could lead to an increase? Please explain.*

The Company is not aware of any circumstances or change in market conditions that would warrant a decrease in Canadian issuers targeted by activist short sellers. It is the Company's position that it is likely an outlier year.

6. *Is there any specific evidence that would suggest that Canadian markets are more vulnerable to activist short selling, including potentially problematic activist short selling (e.g., size and type of issuers, industries/sectors represented or other market conditions)?*

The Company is not aware of any specific reason why Canadian markets would be the target of short campaigns other than the lack of a reporting framework. Absent a reporting regime, short sellers can work in anonymity in Canadian markets.

- a. *Please provide specific examples of these vulnerabilities, and how they differ from other jurisdictions.*

See response above.

7. *Do issuers have practical limitations in terms of their ability to respond to allegations made in a Campaign? If so, what are these limitations, and do you have any recommendations on how to alleviate them?*

There are several practical considerations around a company's ability to respond to a short and distort campaign.

Litigation or Threat of Litigation

Typically a successful short and distort campaign that negatively impacts the company's share price results in litigation against the company that is targeted. This will immediately limit a company's ability to respond fully to the short and distort campaign on fears that whatever the company states in its response could be used against them in future court proceedings. Therefore, statements that a company makes to defend itself are carefully chosen and scrutinized by its legal counsel. The inability to fully defend the company's position leaves shareholders uncertain about where the company stands and erodes confidence.

Regulatory Constraints

In defending itself, a company is restricted in its response, while the short and distort campaign can spread falsehoods without recourse. Filers post warnings in communications about forward looking statements while the short seller has no such limits. Regulators will scrutinize a filer's public documents and in some cases, require the filer to amend its filings. No such regulation is required for the short seller to the extent the short seller has sufficient caveats in their short and distort reports.

8. *Are issuers reluctant to approach regulators when they believe that they are being unfairly targeted by an activist short seller? If so, why? If not, why not?*

In the past, companies that have been targeted by a short selling campaign have been reluctant to go to the regulators due to the perception that the current regulations don't have the ability to stop the action. As far as the Company is aware, there is no punitive measure that can be levied against a short seller for the publishing of a caveated short and distort report with misleading or inaccurate information.

The other significant concern that companies have is that a notifying regulator will invite an investigation of the company itself. While most companies have nothing to hide, if the investigation is made public the short and distort

campaign could use that fact to their benefit, as giving credence to the short and distort campaign itself. External legal counsel will recommend that its client *not* approach the regulator before first publicly responding to the allegations.

9. *Is the existing regulatory framework adequate to address the risks associated with problematic activist short selling? Please explain why or why not and provide specific examples of concerns and areas where, in your view, the regulatory framework may not be adequate.*

The Company does not believe that the current regulatory framework addresses the risks associated with problematic short selling. Please see our responses to questions 11 and 15.

10. *Have there been market developments or new information since 2012, when UMIR amendments regarding short selling and failed trades were implemented, that would warrant revisiting the existing regulatory framework for short selling? If so, please describe these new developments or information and indicate, providing evidence to support your views:*

- a. whether, in your view, there is a connection between failed trades and activist short selling;*

The Company does not have the information to make this determination as it is not aware of failed trade information being publicly available. The Company would be interested in an analysis of the multi-year data for failed trades and short selling activity to determine if there is a positive correlation.

- b. what changes should be considered and why, and specifically with respect to potentially problematic activist short selling activities; and*

The Company believes that the increase in social media platforms since 2012 that are focused on investing in publicly traded companies is a significant market development. Online trading by individuals has replaced brokers. Anyone with access to a trading platform can trade a company's stock and more importantly, present views on public forums related to the stock. Online comments have varying degrees of regulation by the forum itself. Further, the Company is not aware whether the account holders who post to these forums are vetted when setting up their individual accounts.

The Company has seen online forums where misleading information is spread about NDM which is relied upon by others on the forum. Regulators need to consider whether they have jurisdiction to even regulate these forums and if not, whether they should have the power to do go after specific accounts.

- c. whether there are relevant regulatory requirements in other jurisdictions that should be considered and why.*

The Consultation Paper outlines the regulatory requirements in other jurisdictions around the world. The requirement by the European Securities and Markets Authority requiring public disclosure of the short disclosure once it reaches 0.5% of the issued and outstanding share capital of the company could be adopted in the Canadian markets. In the Company's view, this is preferred over the Australian model where only aggregate data on a shorted security is provided as this information is not as informative to the market.

11. *Is the existing disclosure regime for short selling activities adequate? Please explain why or why not, indicating:*

- a. what disclosure requirements would address risks associated with potentially problematic activist short selling and how would such requirements improve deterrence;*

The Company does not believe that the current regime provides sufficient transparency into short sellers. If a reporting regime that required a short seller to report their position upon holding a certain percentage of a company's shares, it would provide additional information to regulators to create a proper regulatory oversight. Currently it is difficult to make a clear connection between a short and distort campaign and a coordinated shorting of the Company's stock so perhaps a short seller disclosure requirement would alleviate this.

b. what should be the trigger and the timing of any additional disclosure;

As noted in the Consultation Paper, a 0.5% short position in the Company could be the appropriate trigger for short sellers to publicly disclose their short position. Regulators need to consider the nuances of the Canadian market and whether this percentage properly balances the public's need for transparency while at the same time providing liquidity to the markets.

c. how can additional disclosure be meaningful without negatively impacting market liquidity; and

The Consultation Paper states that short sellers may be deliberate in their short positions to stay under the disclosure threshold and it is difficult to ascertain whether this will have an adverse impact on market liquidity. This will only be known once the disclosure requirement is put into practice.

d. do you foresee any issues with imposing a duty to update once there has been a voluntary disclosure of a short position?

The Company does not see a problem with imposing a duty to update. This would be similar to an Institution Investor reporting an increase in their share position of a company once over a certain threshold.

12. In your view, do the existing enforcement mechanisms adequately deter problematic activist short selling? If so, why? If not, why not?

a. Can deterrence be improved through specific regulation of activist short sellers? If so, how?

Please see our response to question 15 below.

13. Are there additional or different regulatory or remedial provisions that could be considered to improve deterrence of problematic conduct? If so, what are these provisions?

The Company believes a higher level of accountability amongst short sellers need to be considered by the regulators. Whether this consists of the requirement of a short seller to issue an amendment on false or misleading information that is published or the imposition of fines of various levels for presenting information that are not supported.

14. Can you provide examples of specific activist short selling conduct that in your view is problematic but may not fall within the scope of existing securities offences such as market manipulation and misrepresentation/misleading statements? In your view, how should this problematic conduct be addressed by regulators?

The Company cannot point to a specific example¹⁵, but our understanding is that when a short selling campaign is undertaken there will usually be a number of parties/funds/institutions involved; it will be a well thought out and orchestrated plan. These short sellers (the Group) will know in advance of the planned activities and timing, including target dates for public disseminations (of the short report), news articles, social media campaigns and class action litigation initiation. Knowing this in advance and acting on it prior to its occurrence would seem to be trading on material information prior to public dissemination of such information. The Company believes there is a lack of regulatory oversight or investigation in this regard.

15. Is it important that a statement have actual market impact to trigger enforcement action by securities regulators?

The Company does not believe that a statement should have an immediate market impact to trigger an enforcement by the securities regulator. Irrespective of its impact on a share price, if a statement includes *material* false or misleading statements about a publicly traded company, it should be removed, amended or if the poster fails to comply, a warning to readers that the information presented is inaccurate. If these reports are left as is without context, investors could rely on such a report to make their investment decision.

- a. Should another standard be used? For example, in your view is the "reasonable investor" standard a preferable approach (e.g., would a reasonable investor consider that statement important when making an investment decision)? If so, why? What are the potential implications of such a change?*

The Company agrees that some determination of material should be used when assessing the standard to be used. Clearly a short and distort campaign that results in a significant deterioration in a company's share price is material and warrants an appropriate response from the party that disseminates the report. Social media posts where posters play 'fast and loose' with facts may require some response from the regulators but perhaps not to the level of a public response. The Company recognizes that there is a balance between meeting the needs of the company, the public markets and the resources available to enforce those objectives.

The Company wishes to thank the Canadian Security Administrators for the opportunity to provide comments on this topic.

¹⁵ The Company cannot point to a specific example because the Group involved in the short and distort campaign seeks anonymity, other than the party issuing the short report. And there is no disclosure requirements in these instances, even if the Group accumulates a short position, unlike investors who acquire a long position over a particular threshold.