



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

July 12, 2013

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

To the attention of:

Mtre Anne-Marie Beaudoin, Corporate
Secretary
Autorité des marchés financiers
800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Ladies and Gentlemen:

CSA Notice and Request for Comment on Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* and Proposed Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (the “Draft Amendments to the Early Warning Requirements”)

This submission is made by the Pension Investment Association of Canada (PIAC) in response to the CSA Notice and Request for Comment on the Draft Amendments to the Early Warning Requirements published on March 13, 2013.

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over \$1 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

Response to Proposed Amendments:

This letter addresses elements of the Proposed Amendments that may have systemic, wider reaching implications for the effective passage of corporate governance, shareholder democracy and market transparency. PIAC supports the principle of greater transparency for all market participants including issuers, investors and related stakeholders. PIAC encourages initiatives that enhance the ability of an issuer to better know its shareholder base, and so supports the objective of the Proposed Draft Amendments to the "Early Warning Requirements" submitted by the CSA.

PIAC is of the view that the Proposed Amendments should apply to all reporting issuers, and that, in the interests of fairness, an early warning threshold, once agreed to, would then apply to all eligible institutional investors (EII's) reporting under the alternative monthly reporting (AMR) system. While any new threshold may result in an increased compliance burden for investors in the short term, the long term goal of the Proposed Amendments should be that the benefits of disclosure for all institutional investors eventually outweigh any reporting disadvantages. As the Proposed Amendments are aimed at both the professional and the retail investor, PIAC suggests that the OSC and AMF consider whether the proposed disclosure format readily permits the retail investor to access filings to use the disclosed information as intended.

While derivative financial instruments are not generally used by institutional investors for the purpose of engaging in a change of control transaction, the Proposed Amendments NP 62-203 nonetheless underscore the need for full and open dialogue amongst investors to properly define equity equivalent derivatives in the context of economic ownership, applicable voting rights, and appropriate reporting for Canadian entities.

Considering the complexity of modern derivative instruments, PIAC believes this is an opportune moment in time for the CSA to invite debate from Canadian institutional investors before imposing the requisite reporting requirements upon the investors. This dialogue should ideally occur before the early warning reporting requirements relating to derivatives take effect, so as to avert any unintended consequences.

Other Concerns:

The main relevant criteria for an equity equivalent derivative for the purposes of NP 62-203 should be whether or not it confers voting rights, and whether these are commensurate with economic ownership. Instead of focusing on the level of exposure to reference securities, the Proposed Amendments could more explicitly capture derivatives that immediately confer voting rights upon an investor, and require these

derivative types to be reported. The CSA may wish to consider excluding from the early warning calculation all derivative products that are used solely for the purpose of hedging long positions as disclosure of such positions could allow the market to deduce certain investment strategies which could be detrimental to institutional investors.

The requirement to disclose all equity equivalent derivatives could inadvertently mask actual ownership and control over voting securities. Consider an investor who owns 11% of issuer A. in conjunction with a short index total return swap of -2% of issuer A. This investor would not be required to disclose ownership under the Proposed Amendments despite having the requisite voting rights. Similarly, if the investor owns less than 10% of issuer A. but crosses the threshold 10% through a derivatives holding, the investor would be required to disclose under the Proposed Amendments. Frequent reports on synthetic positions that are not accompanied by voting rights may serve to create 'noise' rather than add value in the marketplace.

To ward off any potential confusion in the event both lenders and borrowers report ownership and control over the same securities, borrowers should be explicitly required to disclose if the securities they have borrowed may be recalled by the lender. The presentation of such information should be distinguishable and easily accessible. PIAC further suggests that a definition of intent to solicit proxies may be in order. PIAC supports the principle of shareholder democracy and would not, for example, view collaborative shareholder engagement as an untoward intention to solicit proxies.

Conclusion:

We appreciate this opportunity to comment on the Draft Amendments to the Early Warning Requirements. Please do not hesitate to contact Stéphanie Lachance, Chair of the Corporate Governance Committee (514-925-5441; slachance@investpsp.ca), if you wish to discuss any aspect of this letter in further detail.

Yours sincerely,



Brenda McInnes
Chair