



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

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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

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Mr. John Stevenson, Secretary
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Ladies and Gentlemen:

CSA proposed National Instrument 62-105 Security Holder Rights Plans and related companion policy (“CSA Consultation Paper”) and AMF Consultation Paper: An Alternative Approach to Securities Regulators’ Intervention in Defensive Tactics (“AMF Consultation Paper”)

This submission is made by the Pension Investment Association of Canada (PIAC) in response to the CSA Consultation Paper and the AMF Consultation Paper, both published on March 14, 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.

General

PIAC upholds the principles of transparency, good corporate governance, and shareholder democracy and as such, generally supports initiatives that attempt to minimize uncertainty in the Canadian securities regulatory landscape. In recent years, there has been significant uncertainty regarding the manner in which Canadian securities regulators may intervene to regulate the operation of security holder rights plans (Rights Plans). PIAC fully supports the intent behind the proposed initiatives as set forth in the CSA Consultation Paper.

PIAC is of the view that providing clarity in the application of rules as they relate to Rights Plans is integral to their successful application and implementation; and upholds the view that the shareholders of a corporation, as owners, should ultimately determine what is in their own best interests.

PIAC believes that the CSA Proposal establishes an appropriate balance between the rights of shareholders and the duties of boards of directors. Directors, in fulfilling their fiduciary duties, are empowered to adopt Rights Plans as they see fit, subject to the ultimate approval of the shareholders. PIAC also supports initiatives that reduce coercive effects on shareholders and is therefore supportive of certain principles outlined in the AMF Consultation Paper.

PIAC's shareholder focused position in respect of Rights Plans is consistent with the view on the proxy voting system expressed in PIAC's letters to the OSC dated May 29, 2012, and June 3, 2013 on its Statement of Priorities for fiscal years ending March 31, 2013 and 2014. PIAC takes this opportunity to strongly encourage the CSA to rapidly move forward on a meaningful and fundamental review of the proxy voting system to ensure that shareholder votes are properly tabulated such that each shareholder vote counts (and counts only once).

1. CSA Consultation Paper

You will find below comments on each question set forth in the CSA Consultation Paper.

1. *In your view, is the Proposed Rule preferable to the status quo, amending the bid regime to mandate "permitted bid" conditions and disallow Rights Plans, or amending NP 62-202 to provide specific guidance on when securities regulatory authorities would intervene on public interest grounds to cease trade a Rights Plan?*

PIAC supports the Proposed Rule and believes it is preferable to the status quo in that it reduces the need for regulatory intervention and promotes consistency as it provides

assurance to both bidders and boards of directors regarding the process and timing for Rights Plans. It further clarifies the weight that will be given to a shareholder vote with regard to a Rights Plan and strengthens the capacity of the board to respond to takeover offers in a way that enhances long-term shareholder value. We believe it strikes an appropriate balance between the exercise by a board of its fiduciary duties and the rights of shareholders, as owners of the corporate entity, to assess what is in their best interests.

We would also support proposals to amend NP 62-202 to provide specific guidance on when securities regulatory authorities would intervene on public interest grounds to cease trade a Rights Plan. Such guidance would provide more clarity and business certainty with regard to the validity of a Rights Plan.

2. *Do you think that implementing the Proposed Rule will reduce the need for securities regulators to review Rights Plans through public interest hearings? Please provide details.*

Yes. We believe the Proposed Rule essentially establishes a code of conduct with respect to Rights Plans that should reduce instances where securities regulators will be called upon to review Rights Plans.

3. *Do you think the Proposed Rule will have any negative impact on the structure of take-over bids in Canada? Please provide details.*

While the Proposed Rule may affect the timing of take-over bids, we believe any such negative impact is offset by the benefits of having greater certainty with respect to the regulatory review of Rights Plans and, potentially, by reducing the influence of shareholders with a short term vision.

4. *Is the discretion given to a board of directors under the Proposed Rule appropriate?*

Yes. We believe the Proposed Rule establishes an appropriate balance between the boards' discretion in adopting a Rights Plan that favours the long-term interests of the corporation and the ultimate approval to be exercised by a majority of shareholders, acting as owners of the corporation, in respect of fundamental changes involving the corporate entity.

5. *In your view, would the increased leverage of target boards and greater shareholder control over the use of Rights Plans that would result under the Proposed Rule unduly discourage the making of hostile take-over bids?*

We do not believe so. While it may discourage some potential take-over bids, as the bidder's costs to remove a Rights Plan would be substantially higher than the cost of requesting a regulatory hearing, these costs would likely be factored into the overall costing of the hostile bid.

If you believe hostile take-over bids will be inhibited, please explain whether or not you support that impact or have concerns.

[Not applicable.]

If you believe that the Proposed Rule may unduly discourage hostile take-over bids, please explain how you would modify the Rule to address your concerns.

[Not applicable.]

6. *Do you believe that other changes or consequential amendments to applicable securities legislation will be necessary if the Proposed Rule is implemented? Please explain.*

We believe the 50% irrevocable minimum tender condition and 10-day bid extension once this threshold is reached, as put forward in the AMF Proposal, would be desirable changes to the take-over bid regime.

PIAC fully supports the efforts of the CSA to promote good corporate governance within the Proposed Rules. We also recommend that the CSA continue to review broader, systemic issues impacting shareholder democracy, such as the efficacy of the voting process, and the impacts of complex derivatives upon share ownership to ensure that the results of any shareholder meeting actually reflect the voting instructions submitted by bona fide shareholders.

Specific

7. *The Proposed Rule contemplates that Rights Plans are effective following adoption provided that they are approved by shareholders within 90 days.*

(a) Is this timing appropriate? Should issuers have more or less than 90 days to obtain shareholder approval of a Rights Plan?

We believe the 90 day period is appropriate and gives the board and its shareholders time to adequately assess a proposed offer.

(b) Should the time period for shareholder approval be different depending on whether the Rights Plan was adopted in the absence of a proposed take-over bid or adopted in the face of a take-over bid?

No.

8. *The Proposed Rule contemplates that a Rights Plan that is adopted after a take-over bid is made may remain in effect for a 90 day period pending security holder approval. We note that this 90 day period is longer than both the minimum 35 day period that a bid is required to be outstanding under applicable securities legislation and the 45 to 55 day period by which securities regulators have*

historically ceased traded a Rights Plan when successfully opposed by a bidder. Please provide your comments on the effect of this extension of the time.

Please refer to the comments for question 7(a), above.

9. *While the Proposed Rule contemplates that Rights Plans are effective following adoption provided that they are approved by shareholders within the specified 90 day period, it does not mandate that a shareholder meeting be held within this 90 day period. This means, in effect, that a Rights Plan can remain in place for 90 days even if the board of directors choose not to hold a meeting. Should the Proposed Rule address the circumstance where an issuer does not take steps to call a shareholder meeting after a Rights Plan has been adopted?*

PIAC believes that it would not be appropriate to prescribe a code of conduct in situations where a target board does not call a shareholders meeting after a Rights Plan has been adopted. There may be instances where a board of directors has concluded that convening a shareholders meeting is not desirable (for example, situations where a target is in negotiations with a potential acquirer). Without establishing a formal rule, guidance on this topic may be included in NP 62-202.

10. *The Proposed Rule contemplates that all Rights Plans must be re-approved by shareholders by no later than the date of the issuer's annual meeting in each financial after the issuer first obtained security holder approval.*

(a) Is this timing appropriate?

Rights Plans are intended to address fundamental changes in the corporate entity. PIAC believes that shareholders should have the ultimate say on the implementation and the maintaining of a rights plan and finds the annual re-approval proposal desirable.

(b) Should Rights Plans that were adopted in the absence of a proposed take-over bid be effective for a longer period of time than Rights Plans that were adopted in the face of a take-over bid?

PIAC is of the view that the same rules should apply.

11. *The definition of "security holder approval" in the Proposed Rule does not exclude votes cast by management of the issuer. Please explain whether or not you believe this is appropriate.*

While we recognize that management's interests may not be aligned with shareholders in a hostile bid situation, we do not believe that the potential for conflicts is sufficient to deny management their rights as a shareholder to vote in their self-interest in respect of the approval of a Rights Plan.

Does your answer depend on whether the security holder approval is being sought in respect of a Rights Plan that was adopted in the absence of a

proposed take-over bid as compared to one that was adopted in the face of a take-over bid?

No.

Would you like to see any other voting issues addressed?

No.

12. *Section 3 of the Proposed Rule limits the effectiveness of rights plans to take-over bids and the acquisition of securities of an issuer by any person. Does this limitation unduly restrict the potential applications of rights plans?*

No comment.

Should rights plans be permitted to be effective against irrevocable lock-up agreements?

Yes.

13. *Do you agree with the application of the Proposed Rule to material amendments to a Rights Plan?*

Consistent with PIAC's view that shareholders should ultimately approve Rights Plans, we agree with the application of the Proposed Rule to material amendments to a Rights Plan.

Do you believe that the nature of what may constitute a material amendment should be more fully addressed in the Proposed Rule or the Proposed Policy?

Yes. Additional guidance would assist practitioners in their interpretation of the Proposed Rule.

14. *Should the Proposed Rule or Proposed Policy facilitate the ability of dissident shareholders or a bidder to challenge a pre-approved Rights Plan beyond the provisions of applicable corporate law by, for example, setting a minimum time period within which a meeting must be held or by dispensing with minimum ownership requirements?*

PIAC believes that setting a 90 day time limit for shareholder meetings to challenge a pre-approved Right's Plan would have the positive effect of reducing uncertainty among market participants. In addition, we believe that the current 5% threshold to requisition a shareholder meeting is appropriate because provides some assurance that meetings will only be held when there is a reasonable likelihood for successfully challenging a Rights Plan.

15. *Section 5 of the Proposed Rule provides a general exception from security holder approval for new reporting issuers. Should this exception be limited or subject to*

conditions depending on the manner by which the issuer becomes a reporting issuer or the circumstances of the transaction (for example, if the new reporting issuer is a spin-out of another reporting issuer)?

No comment.

16. *The Proposed Rule includes a transition provision in section 10. Is the time period contemplated in this provision appropriate?*

No comment.

2. AMF Consultation Paper

PIAC supports the principle of shareholder democracy and the right of shareholders to have ultimate approval over fundamental changes to a corporate entity. PIAC commends the AMF on this Consultation Paper which has encouraged a meaningful debate on the question of defensive measures generally and more specifically of Rights Plans. PIAC supports the proposals in the AMF Consultation Paper dealing with changes to the regulatory regime applicable to take-over bids (i) to require a minimum tender condition of 50% +1 and (ii) to extend the bid period by ten days following reaching the mandatory minimum tender condition as so doing would allow security holders of a target company subject to a take-over bid to have the ability to make a voluntary, undistorted collective decision to sell.

Conclusion

We appreciate this opportunity to comment on the CSA and AMF Consultation Papers. 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