

**CSA Notice 62-307*****Update on Proposed Amendments to Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids, National Instrument 62-103 Early Warning System and Related Take-Over Bid and Insider Reporting Issues and National Policy 62-203 Take-Over Bids and Issuer Bids***

**October 10, 2014**

**Introduction**

On March 13, 2013, the Canadian Securities Administrators (the **CSA** or **we**) published for comment draft amendments and changes to:

- Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104),
- National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103), and
- National Policy 62-203 *Take-Over Bids and Issuer Bids* (NP 62-203) (collectively, the **Draft Amendments**).

The purpose of the publication was to address concerns about the level of transparency of significant holdings of issuers' securities under the early warning reporting system: in particular, the reporting threshold of 10%, and the adequacy of disclosure in early warning reports filed in Canada.

This notice provides an update to market participants on the status of the Draft Amendments.

**Background**

The Draft Amendments proposed a lower early warning reporting threshold of 5%, requiring disclosure of decreases in ownership of 2% or more of securities and enhancing the content of the disclosure in the early warning news releases and reports. We also proposed changes so that certain hidden ownership and empty voting arrangements would be disclosed, and we proposed that eligible institutional investors that solicit proxies on matters relating to the election of directors or corporate actions involving an issuer's securities be unable to use the alternative monthly reporting system.

**Summary of Comments**

The comment period on the Draft Amendments ended on July 12, 2013. We received over 70 comment letters from various market participants that reflected a broad range of opinions. We wish to thank all of the commenters for their contributions.

We have reviewed and discussed the comments received. Many commenters provided helpful substantive submissions, information and perspectives on the Draft Amendments. We note that the commenters generally agreed with the enhanced transparency objective of the Draft Amendments. However, a majority of commenters raised various concerns about potential unintended consequences of certain Draft Amendments.

The comment process has assisted the CSA in re-considering certain elements of the Draft Amendments. Some factors that commenters suggested we should consider are the:

- unique features of the Canadian market, compared to the United States and other markets, including the large number of smaller issuers and the limited liquidity of these smaller issuers and of our market;
- potential detrimental or inadvertent impact of certain Draft Amendments, such as hindering an investor's ability to rapidly accumulate or reduce a large position and the signalling of investment strategies to the market;
- complexity and difficulty of applying a new early warning reporting trigger in respect of "equity equivalent derivatives";
- significant administrative and compliance burden associated with implementing additional reporting obligations; and
- potential benefits of the enhanced disclosure being outweighed by the potential negative impact of implementing certain Draft Amendments.

We intend to provide a summary of comments received in respect of the Draft Amendments in our next publication.

## **Final Amendments**

In light of the comments received and following further reflection and analysis, the CSA have re-considered the proposals and have determined not to proceed with certain of the Draft Amendments. Instead, the CSA intend to proceed to publish final amendments to MI 62-104 and NI 62-103 as well as guidance in NP 62-203 (collectively, the **Final Amendments**) that will address certain key issues identified in the Draft Amendments.<sup>1</sup>

The CSA have concluded that it is not appropriate at this time to proceed with:

- the proposal to reduce the reporting threshold from 10% to 5%; and
- the proposal to include "equity equivalent derivatives" for the purposes of determining the threshold for early warning reporting disclosure.

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<sup>1</sup> In Ontario, we anticipate that amendments to the *Securities Act* (Ontario) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* will be proposed in order to allow the substance of the Final Amendments to apply fully.

Nonetheless, subject to necessary approvals, we are proceeding with the following Final Amendments. These amendments will enhance transparency by:

- requiring disclosure of 2 % decreases in ownership;
- requiring disclosure when a shareholder's ownership interest falls below the reporting threshold;
- making the alternative monthly reporting system unavailable to eligible institutional investors as described in the Draft Amendments, with additional clarification on the circumstances when they would be precluded;
- exempting lenders from disclosure requirements if they lend shares pursuant to a specified securities lending arrangement;
- exempting borrowers, in certain circumstances, from disclosure requirements if they borrow shares under a securities lending arrangement;
- providing guidance clarifying the current application of early warning reporting requirements to certain derivatives and requiring disclosure of derivatives in the early warning report;
- enhancing and improving the disclosure requirements in the early warning report; and
- clarifying the timeframe to file the early warning report and news release.

The CSA believe that the intended Final Amendments, while not as extensive as the Draft Amendments, will enhance the quality and integrity of the early warning reporting regime in a manner that is appropriate for the Canadian public capital markets.

### **Next Steps**

We are in the process of completing the Final Amendments and, subject to necessary approvals, intend to publish them in the second quarter of 2015.

### **Questions**

Please refer your questions to any of the following:

*Ontario Securities Commission*

Naizam Kanji  
Deputy Director, Corporate Finance  
Head, Mergers & Acquisitions and Shareholder Rights  
Ontario Securities Commission  
(416) 593-8060  
[nkanji@osc.gov.on.ca](mailto:nkanji@osc.gov.on.ca)

Jason Koskela  
Senior Legal Counsel  
Mergers & Acquisitions and Shareholder Rights  
Corporate Finance Branch  
Ontario Securities Commission  
(416) 595-8922  
[jkoskela@osc.gov.on.ca](mailto:jkoskela@osc.gov.on.ca)

Adeline Lee  
Legal Counsel  
Mergers & Acquisitions and Shareholder Rights  
Corporate Finance Branch  
Ontario Securities Commission  
(416) 595-8945  
[alee@osc.gov.on.ca](mailto:alee@osc.gov.on.ca)

*Autorité des marchés financiers*

Lucie J. Roy  
Senior Director, Corporate Finance  
Autorité des marchés financiers  
(514) 395-0337, ext. 4361  
Toll free: 1 (877) 525-0037  
[Lucie.roy@lautorite.qc.ca](mailto:Lucie.roy@lautorite.qc.ca)

Michel Bourque  
Senior Policy Adviser  
Autorité des marchés financiers  
(514) 395-0337, ext. 4466  
Toll free: 1 (877) 525-0037  
[Michel.bourque@lautorite.qc.ca](mailto:Michel.bourque@lautorite.qc.ca)

Diana D'Amata  
Senior Policy Adviser  
Autorité des marchés financiers  
(514) 395-0337, ext. 4386  
Toll free: 1 (877) 525-0037  
[Diana.damata@lautorite.qc.ca](mailto:Diana.damata@lautorite.qc.ca)

Andrée-Anne Arbour-Boucher  
Senior Securities Analyst, Corporate Finance  
Autorité des marchés financiers  
(514) 395-0337, ext. 4394  
Toll free: 1 (877) 525-0037  
[Andree-anne.arbour-boucher@lautorite.qc.ca](mailto:Andree-anne.arbour-boucher@lautorite.qc.ca)

*British Columbia Securities Commission*

Gordon Smith  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
(604) 899-6656  
Toll free across Canada: 1 (800) 373-6393  
[gsmith@bcsc.bc.ca](mailto:gsmith@bcsc.bc.ca)

Leslie Rose  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
(604) 899-6654  
Toll free across Canada: 1 (800) 373-6393  
[lrose@bcsc.bc.ca](mailto:lrose@bcsc.bc.ca)

*Alberta Securities Commission*

Ashlyn D'Aoust  
Legal Counsel  
Corporate Finance  
(403) 355-4347  
[Ashlyn.daoust@asc.ca](mailto:Ashlyn.daoust@asc.ca)

Tracy Clark  
Legal Counsel  
Corporate Finance  
(403) 355-4424  
[tracy.clark@asc.ca](mailto:tracy.clark@asc.ca)

*Financial and Consumer Affairs Authority of Saskatchewan*

Sonne Udemgba  
Deputy Director, Legal, Securities Division  
Financial and Consumer Affairs Authority of Saskatchewan  
(306) 787-5879  
[sonne.udemgba@gov.sk.ca](mailto:sonne.udemgba@gov.sk.ca)

*Manitoba Securities Commission*

Chris Besko  
Acting General Counsel & Acting Director  
Manitoba Securities Commission  
(204) 945-2561  
[chris.besko@gov.mb.ca](mailto:chris.besko@gov.mb.ca)