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CSA Notice and Request for Comment

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*

March 13, 2013

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a 90-day comment period proposed amendments and changes to:

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

The text of the Proposed Amendments is contained in Annexes A through C of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

The objective of the Proposed Amendments is to provide greater transparency about significant holdings of issuers' securities by proposing an early warning reporting threshold of 5%, requiring disclosure of both increases and decreases in ownership of 2% or more of securities, and enhancing the content of the disclosure in the early warning news releases and reports required to be filed. We are also proposing changes so that certain “hidden ownership” and “empty voting” arrangements are disclosed.

The Proposed Amendments include amendments to the early warning reporting requirements in MI 62-104 which applies in all provinces and territories of Canada except Ontario. In Ontario, we anticipate that amendments to the *Securities Act* (Ontario) (Ontario Act) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (OSC Rule 62-504) will be proposed in order to allow the substance of the Proposed Amendments to apply fully in Ontario.

We are not proposing comprehensive reforms to the alternative monthly reporting (AMR) framework in NI 62-103 applicable to eligible institutional investors (EIIs). However, some of the Proposed Amendments will apply to an EII reporting under the AMR regime and we propose a change to the criteria for disqualification from AMR. We will consider more comprehensive changes to the AMR regime as part of a future review.

Background

The early warning system was introduced in Canada in 1987 as a result of proposals made by the Securities Industry Committee on Take-over Bids (the Industry Committee).[1]

The Industry Committee believed that a 20% threshold was appropriate for regulating take-over bids in Canada but at the same time recognized that the accumulation of a holding of 10% should be disclosed as it could be a signal of a potential acquisition of control.

In June 1990, the CSA published for comment a proposal to reduce the take-over bid threshold to 10% and the early warning disclosure threshold from 10% to 5%.

Although the CSA presented the decrease in the early warning threshold as possibly being dependent on a decrease of the take-over bid threshold, in our view, the take-over bid threshold is not the only relevant factor in determining the early warning threshold.

In the 1990 Request for Comment, the CSA stated that “the reduction in the early warning disclosure threshold from 10% to 5% is being proposed by the CSA to increase the level of disclosure available to securities regulators and the public.”[2]

Comments received were mixed. Many agreed with the decrease to 5% but expressed practical concerns about the compliance burden on passive investors. It was suggested that the CSA consider adopting a disclosure regime for passive institutional investors similar to the one available in the U.S.

In September 1998, the CSA published for comment proposed NI 62-103. The primary purpose of proposed NI 62-103 was to provide exemptions from the early warning requirements and the insider reporting requirement to certain institutional investors that have a "passive intent" with respect to their ownership or control of securities of reporting issuers

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1 Report of the Securities Industry Committee on Take-over Bids, *The Regulation of Take-over Bids in Canada: Premium Private Agreement Transactions* (November 1983), at p.46.

2 Request for Comment, *Proposed Changes to Provincial Securities Legislation – Take-Over Bids*, June 8, 1990.

and to permit those persons to disaggregate securities that they own or control for purposes of those requirements in certain circumstances.

The Notice that accompanied proposed NI 62-103 described the rationale for the early warning system as follows. We believe that rationale is still valid today.

> The early warning system contained in the securities legislation of most jurisdictions requires disclosure of holdings of securities that exceed certain prescribed thresholds in order to ensure that the market is advised of accumulations of significant blocks of securities that may influence control of a reporting issuer. Dissemination of this information is important because the securities acquired can be voted or sold, and the accumulation of the securities may signal that a take-over bid for the issuer is imminent. In addition, accumulations may be material information to the market even when not made to change or influence control of the issuer. Significant accumulations of securities may affect investment decisions as they may effectively reduce the public float, which limits liquidity and may increase price volatility of the stock. Market participants also may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions. The mere identity and presence of an institutional shareholder may be material to some investors.[3]

A number of market participants have recently expressed concerns with the current early warning regime. In particular, they consider that the reporting threshold of 10% ownership is too high and question the adequacy of the disclosure included in the early warning reports filed in Canada, specifically with respect to disclosure about the purpose of the transaction.

Hidden Ownership and Empty Voting

In the Notice and Request for Comment (the Insider Reporting Notice) published in connection with proposed National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104)[4], we identified concerns about the potential use of derivatives to avoid early warning requirements, insider reporting requirements and similar securities law disclosure requirements that are based on the concepts of beneficial ownership and control or direction. Sophisticated investors may be able to use derivatives to accumulate substantial economic positions in public companies without public disclosure (this is referred to as “hidden ownership”). We also described in the Insider Reporting Notice issues relating to the disclosure of arrangements where an investor may utilize derivatives or securities lending arrangements to hold voting rights in respect of an issuer although the investor may not have an equivalent economic stake in the issuer (this is referred to as “empty voting”).

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[3] Notice of National Instrument 62-103 *The Early Warning System and Take-Over Bid and Insider Reporting Issues*, September 4, 1998. NI 62-103 came into force across Canada on March 15, 2000.

[4] Notice and Request for Comment, Proposed National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, Part 10 Future Initiatives – Hidden Ownership and Empty Voting, December 18, 2008.

We indicated in the Insider Reporting Notice that we were reviewing reform proposals to address hidden ownership concerns in other jurisdictions and were considering developing similar proposals for Canada.

We received a number of comments in support of developing comparable proposals for Canada, including comments from issuers, investors, law firms and investor protection organizations. No commenters opposed our proceeding with this initiative.[5]

NI 55-104 came into force across Canada in April 2010. Since then, we have continued to monitor developments in other major jurisdictions around the world. A number of jurisdictions have now introduced rules that require investors to aggregate and disclose derivatives for reporting purposes.[6]

Substance and Purpose

Reporting Threshold

The basic requirements of the early warning regime are set out in Part 5 of MI 62-104 and sections 102 and 102.1 of the Ontario Act and Part 7 of OSC Rule 62-504. Under the early warning regime, if a person acquires beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer that would constitute 10% or more of the outstanding securities of that class, the person must issue and file a news release promptly and file a report within 2 business days. A person must also issue a news release and file a report for additional acquisitions of 2% or more of the outstanding securities. Other than under the AMR regime for EIIs, the current early warning regime does not specifically require disclosure of decreases in ownership of, or control or direction over, voting or equity securities.

The early warning regulatory framework requires disclosure of holdings of securities to advise the market of accumulations of significant blocks of securities that may influence control of a reporting issuer. Dissemination of this information is important because the securities acquired can be voted, or the accumulation of the securities may signal that a take-over bid for the reporting issuer is possible.

In our view, our current threshold of 10%, introduced in 1987, does not respond to the reality of increasing shareholder activism and to the ability of a shareholder holding 5% to requisition a shareholders' meeting. The objective of early warning disclosure is not only to predict possible take-over bids but also to anticipate proxy-related matters where a threshold of 5% may be critical. Our early warning disclosure requirements should recognize the realities of our current markets where a significant accumulation of securities is relevant for purposes beyond signaling potential take-over-bids.

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5 Notice of National Instrument 55-104 *Insider Reporting Requirements and Exemptions,* Appendix C Summary of Comments and CSA Responses, January 22, 2010.

6 For example, in the United Kingdom, the Financial Services Authority introduced new rules, effective June 2009, that generally require investors to aggregate their holdings of shares, "qualifying instruments" and "financial instruments with a similar economic effect to qualifying instruments" (e.g., "contracts for difference") in relation to most UK-listed issuers in determining whether they have crossed a disclosure threshold. See Financial Services Authority, Disclosure of Contracts for Difference – Questions & Answers: Version 3 (November 2010), available at http://www.fsa.gov.uk/pubs/ukla/disclosure.pdf .

We propose to decrease the reporting threshold from 10% to 5%. We believe this lower threshold is appropriate because information regarding the accumulation of significant blocks of securities is relevant for a number of reasons in addition to signaling a potential take-over bid for the issuer, such as:

- it may be possible for a shareholder at the 5% level to influence control of an issuer;
- significant shareholding is relevant for proxy-related matters (for example, under corporate legislation, a shareholder can generally requisition a shareholders' meeting if it holds 5% of an issuer's voting securities);
- market participants may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions;
- significant accumulations of securities may affect investment decisions;
- the identity and presence of an institutional shareholder may be material to some investors;
- a lower early warning reporting threshold will provide all market participants with greater information about significant shareholders and thereby enhance market transparency;
- a 5% threshold would be consistent with the standard of several major foreign jurisdictions; and
- changes in corporate governance practices have increased the need for issuers to communicate directly with beneficial owners. A lower threshold would provide reporting issuers greater visibility into their shareholder base and a greater ability to engage with significant shareholders earlier. It would also allow shareholders to communicate among themselves earlier.

We do not propose to amend the threshold for reporting further acquisitions; it remains at 2% and a change in a material fact contained in an earlier report.

However, to provide greater certainty to the market, we propose to require disclosure of a 2% decrease in ownership. Currently, the early warning regime does not explicitly require a person to file a further early warning report where there is a decrease in ownership; instead, a person must determine whether the decrease in ownership is a change in a material fact and file a further report based on that assessment. We think that decreases in ownership of an issuer are as relevant to the market as increases in ownership and should be disclosed.

Enhanced Disclosure

The purpose of early warning reporting is to compel the release of information with respect to changes in the ownership of, or control or direction over, a reporting issuer's voting or equity securities to allow the market to review and assess the potential market impact of the change. Investors must be given sufficient information to be able to effectively evaluate the impact. In our view, disclosure to investors of a change that may influence or affect control is essential for market transparency and investor confidence.

Persons subject to the early warning requirements disclose the purpose of the change as part of their early warning news release and report. Concerns have been expressed about the adequacy of the disclosure included in the early warning reports filed in Canada, particularly with respect to disclosure about the purpose of the transaction.

We have found that the disclosure is often inadequate and does not sufficiently inform investors. In our view, more detailed disclosure of, for example, the intentions of the person acquiring securities and the purpose of the acquisition would enhance the substance and quality of early warning reporting.

We think we should require enhanced early warning disclosure. While persons subject to the early warning requirements are required to disclose the purpose of the acquisition as part of their early warning news release and report, we have found that this disclosure often consists of boilerplate language that provides little useful information for the market. We propose to amend our disclosure requirements and specify disclosure of the type of information we expect about the purpose of the transaction. We believe that more detailed disclosure of the intentions of the person acquiring securities and the purpose of the acquisition is required for the market to properly evaluate the particulars of the acquisition.

Hidden Ownership and Empty Voting

Derivatives and Related Financial Instruments

We believe that changes to the scope of the early warning framework are required in order to ensure proper transparency of securities ownership in light of the increased use of derivatives by investors.

A sophisticated investor may be able, through the use of equity swaps or similar derivative arrangements, to accumulate a substantial economic interest in an issuer without public disclosure and then potentially convert this interest into voting securities in time to exercise a vote (this is referred to as “hidden ownership”).

It is also possible for an investor, through derivatives or securities lending arrangements, to hold voting rights in an issuer and possibly influence the outcome of a shareholder vote, although it may not have an equivalent economic stake in the issuer (this is referred to as “empty voting”).

These types of arrangements may not be disclosed under current securities law requirements since these requirements are generally based on the concept of beneficial ownership of, or control or direction over, voting or equity securities. The disclosure of these arrangements would be helpful in maintaining transparency and market integrity.

We are therefore proposing amendments intended to include certain types of derivatives that affect an investor’s total economic interest in an issuer for the purposes of determining the early warning reporting threshold trigger. For the purposes of early warning reporting disclosure, the Proposed Amendments would require disclosure of an investor’s economic interest in an issuer as well as its voting interest in the case of securities lending arrangements. An investor would also have to disclose that it has entered into related financial instruments and other arrangements with respect to the securities of the issuer, if this is the case.

Early Warning Reporting Trigger

We propose to amend the early warning reporting trigger in MI 62-104 and section 102.1 of the Ontario Act (through a new definition of "equity equivalent derivative" and a deeming provision) so that an investor would be required to include within the early warning calculation certain equity derivative positions that are *substantially equivalent* in economic terms to conventional equity holdings.[7]

Our intention is to ensure that, for purposes of the early warning reporting threshold only, an investor would be deemed to have control or direction over voting or equity securities referenced in an "equity equivalent derivative".

The "equity equivalent derivative" concept would capture derivatives that substantially replicate the economic consequences of ownership. We would generally consider a derivative to substantially replicate the economic consequences of ownership of a specified number of reference securities if a dealer or other market participant that took a short position on the derivative could substantially hedge its obligations under the derivative by holding 90% or more of the specified number of reference securities.

An "equity equivalent derivative" would not encompass partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). While the use of partial-exposure instruments could raise policy concerns in certain circumstances, we are mindful that the introduction of a requirement to include partial-exposure instruments may render the early warning threshold calculation unduly complex and onerous for investors. We are not persuaded at this time that the benefits to market participants through inclusion of partial exposure instruments in the early warning threshold calculation would outweigh the costs to market participants in terms of additional complexity. We nonetheless remind market participants that the securities regulatory authorities retain public interest jurisdiction to respond to activities involving partial-exposure instruments that may be considered abusive.

Examples of instruments that we intend to come within the definition of "equity equivalent derivative" include total return swaps (TRSs), contracts for difference (CFDs), and other derivatives that provide the party with the notional "long" position with an economic interest that is substantially equivalent to the economic interest the party would have if the party held the securities directly.

For example, if an investor holds 4.9% of the common shares of a public company and then enters into 3 cash-settled TRSs with 3 dealers each representing the economic equivalent of a 3% ownership position, the investor would have an economic position equivalent to a 13.9% ownership position. Since TRSs would constitute "equity equivalent derivatives" under the Proposed Amendments, the investor would be required to file an early warning report (as a result of having crossed the proposed early warning reporting threshold of 5%).

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[7] We are not proposing, at this time, to similarly revise the calculation of the take-over bid threshold to include equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. We need to consider further the impact of any change to the take-over bid threshold before we propose any amendment to this threshold.

In TRSs and similar derivative instruments, the counterparty (typically, a dealer) will in many cases have a strong economic incentive to hedge its obligations under the arrangement through holding the reference securities and may decide to vote in accordance with its client's wishes or to make the securities available to the client on request.

Hidden ownership strategies can significantly undermine the early warning regime since an investor may have *de facto* access to securities held by the derivative counterparty but avoid a disclosure obligation which has traditionally been premised on *de jure* ownership or control.

The fact that a substantial block of securities has been "tied up" (i.e., is being held by counterparties to a substantial undisclosed equity derivative position), and is therefore not available to market participants, may be highly relevant information to market participants.

We believe that these types of financial instruments are often used by investors that are EIIs and therefore eligible to use the AMR system. However, as noted below, they would be disqualified from AMR in circumstances where they cease to be passive investors.

Disclosure in Early Warning Reports

We also propose to amend the early warning forms (Appendices E, F and G of NI 62-103) to broaden the scope of required disclosure to encompass interests of an acquiror in "equity equivalent derivatives".

If early warning reporting requirements are triggered because a person has acquired (or disposed of) securities or an equity equivalent derivative in respect of securities of a reporting issuer, that person will be required to disclose the existence and material terms of any related financial instruments in which it has an interest.[8] We believe this amendment will result in more specific disclosure about an acquiror's actual economic and voting interests in an issuer and thereby substantially address the transparency concerns associated with these types of arrangements.

Securities Lending Arrangements

We are proposing to clarify and amend the existing early warning reporting disclosure requirements to provide greater transparency about, and ensure appropriate disclosure of, securities lending arrangements for the purposes of early warning disclosure requirements.

Securities lending describes the market practice whereby securities are temporarily transferred from one party (the lender) to another party (the borrower) in return for a fee. As part of the lending agreement, the borrower is obliged to redeliver to the lender securities that are identical to the securities transferred or lent, either on demand or at the end of the loan term. Although securities lending transactions are commonly described as "loans", this description may be misleading in that securities lending transactions, in fact, involve a transfer of title to the loaned securities against a collateralized undertaking to return equivalent securities either on demand or at the end of an agreed term.

Consequently, as the new owner of the securities, the borrower is entitled to vote the securities and receives any dividend or interest payments paid during the loan term.

[8] "Related financial instrument" has the meaning ascribed to that term in NI 55-104.

However, the economic benefits of ownership will typically be transferred back to the lender so, while the borrower is entitled to receive any dividend and interest payments over the life of the loan, it will make equivalent payments to the lender. If the lender wants to vote the loaned securities, it may have the right to recall equivalent securities from the borrower but will not be entitled to vote such securities unless and until they are recalled.

While securities lending arrangements provide benefits to the market, in that they promote enhanced liquidity, reduce custodial fees, and may generate additional revenues for institutional investors and other participants, we believe that increased transparency about these arrangements is appropriate so that the market can assess the use of these arrangements by the parties.

Early Warning Reporting Trigger

We are of the view that existing disclosure requirements already apply to securities lending arrangements and, consequently, it is not necessary to amend the existing early warning reporting disclosure trigger to explicitly capture securities that are "lent" or "borrowed" under such transactions.

1. Reporting by Borrowers

We believe that the current early warning reporting requirements apply to securities that are "lent to" or "borrowed" by a securityholder under a securities lending arrangement for purposes of determining whether the securityholder has crossed an early warning reporting disclosure threshold.

For example, if a securityholder currently owns 4% of the outstanding common shares of a reporting issuer, and then "borrows" an additional 10% of the outstanding common shares, the securityholder will be required to file an early warning report since the securityholder will, as a consequence of the borrowing transaction, have acquired (for the duration of the arrangement) beneficial ownership of, or control or direction over, 5% or more of the outstanding common shares of the issuer.[9] In this example, the borrowing securityholder may also be considered an "empty voter" in connection with the borrowed shares, since the borrower may have the ability to vote these shares but will not, as a result of the borrowing arrangement, have an economic interest in the shares.

2. Reporting by Lenders

Consistent with our view regarding the application of early warning requirements for borrowing securityholders, we also believe that securities "lent out" by a securityholder under a securities lending arrangement must be accounted for in determining if the lender has crossed the early warning reporting disclosure threshold.

We also note that, as described above, we are proposing to require persons who are subject to early warning reporting obligations to report not only increases but also decreases in ownership

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[9] In this regard, it should be noted that, although the *Income Tax Act* (Canada) (the ITA) includes certain deeming provisions (see Subsection 260(2) of the ITA) that deem a transfer of "qualified securities" pursuant to a "securities lending arrangement" not to be a disposition (or later reacquisition) of the "loaned securities" for the purposes of the ITA, there is currently no comparable deeming provision under securities legislation.

of 2% or more of the applicable securities.[10] As a result of this proposed downward reporting requirement, we believe that the early warning reporting requirements would, absent an exemption, apply to lenders who dispose of 2% or more of the applicable securities under securities lending arrangements. Using the example from the previous section, the lender of the 10% of outstanding common shares would be required to file an early warning report in respect of the disposition of 10% of the common shares pursuant to the securities lending arrangement, unless an applicable exemption was available.

Exemption for Certain Securities Lending Arrangements

We are considering providing an exemption for lenders from the early warning reporting trigger for securities transferred or lent pursuant to "specified securities lending arrangements". Specified securities lending arrangement would be arrangements that include an unrestricted ability to recall the securities before a meeting of securityholders.

We are not proposing at this time a corresponding exemption for persons that wish to borrow securities from securities lenders as we believe securities borrowing arrangements may give rise to empty voting situations and that early warning disclosure requirements should generally apply to such transactions.

Disclosure in Early Warning Report

Under the current early warning disclosure form, a person that is required to file an early warning report (or an alternative monthly report) is generally not required to disclose the general nature and material terms of "lending arrangements".[11] In view of our concerns over the need for transparency of securities lending arrangements, we are proposing to remove the disclosure carve-out for lending arrangements in early warning reports. The Proposed Amendments include requirements to disclose securities lending arrangements in effect at the time of a reportable transaction even if that transaction did not involve a securities lending arrangement.

Changes to Alternative Monthly Reporting in NI 62-103

The policy rationale underlying the relaxed timing requirements for reporting under the AMR regime in NI 62-103 is that the regime is available only to an EII with a passive intent concerning its ownership or control of securities of a reporting issuer. Currently, the AMR regime is unavailable for an EII who either

- makes, or intends to make, a take-over bid for securities of the reporting issuer, or
- proposes, or intends to propose, a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer if the EII would obtain a controlling interest in the reporting issuer.

An EII who solicits, or intends to solicit, proxies from the securityholders of a reporting issuer is eligible to use the AMR regime even though the intent of the EII may be to actively engage with the securityholders of the reporting issuer. We believe that allowing an EII access to the AMR regime in this circumstance is not consistent with the policy intent of the regime.

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[10] We note that EIIs reporting under the AMR system are currently subject to a reporting requirement for incremental decreases in ownership.

[11] See Item 1(g) of Appendix E and Item 1(g) of Appendix F to NI 62-103.

To address this concern, we propose making the AMR regime unavailable for EIIs who solicit, or intend to solicit, proxies from security holders of a reporting issuer on matters relating to the election of directors of the reporting issuer or a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of the reporting issuer.

Summary of the Proposed Amendments

The Proposed Amendments are summarized as follows.

1. The early warning reporting threshold is decreased from 10% to 5%. The news release must be issued and filed promptly but no later than the opening of trading on the next business day.
2. In calculating whether the threshold has been reached, an investor must include equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings, and securities lending arrangements.
3. Further disclosure is required if there is a 2% increase or decrease in ownership or if there is a change in a material fact contained in an earlier report.
4. A news release must be issued and filed and a report must be filed if the ownership percentage decreases to less than 5%. This proposed change provides valuable information to the market and also resolves reporting difficulties. For example, if ownership decreases from 6% to 4.5%, without the proposed change, disclosure of the decrease to 4.5% would not be required. If, at a later date, a person acquires a 1% ownership, it would not be clear how to disclose the acquisition because the previous report disclosed a 6% ownership but the person owns 5.5%. With the Proposed Amendments, we require disclosure if ownership drops to 4.5% and further disclosure if the 5% threshold is subsequently crossed.
5. Presently, the early warning requirements are accelerated during a take-over bid by requiring disclosure of acquisitions by a party other than the offeror at the 5% level. Since the Proposed Amendments impose a reporting threshold of 5% and disclosure no later than the opening of trading on the next business day, we do not think that we need to maintain the particular provisions for reporting during a take-over bid.

   We are proposing, as a consequential amendment, the repeal of the definition of “acquisition announcement provisions” in NI 62-103.
6. We propose to replace current Appendix E to NI 62-103 with new disclosure requirements in the form of Form 62-103F1. We have added instructions on the type of disclosure we expect for each of the items required to be disclosed. We also propose that the report be certified and signed. Conforming amendments have been made to the disclosure required for an EII found in former Appendix F and Appendix G (now Form 62-103F2 and Form 62-103F3).
7. We exclude a person from the AMR system if the person solicits, or intends to solicit, proxies from the security holders of a reporting issuer on matters relating to the election of directors of the reporting issuer or to a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of the reporting issuer.

Alternatives Considered

Except for maintaining the status quo, no alternatives to the Proposed Amendments were considered.

Anticipated Costs and Benefits

The Proposed Amendments, including the reduction of the early warning reporting threshold from 10% to 5% and enhanced scope of the disclosure obligations, will provide greater transparency about significant holdings of an issuer's securities. We anticipate that the dissemination of this information may lead to greater market efficiency. However, these changes will result in increased compliance costs and other costs, including potential dissemination of investment strategies.

The Proposed Amendments include changes that will require the disclosure and aggregation of certain equity derivative positions and securities lending arrangements. The inclusion of these types of transactions in the early warning framework will reinforce the quality and integrity of the early warning reporting regime. While these changes will create increased compliance costs, we have endeavoured to minimize the impact by limiting, at this time, the types of derivatives that would be captured within the regime and providing an exemption for lenders from disclosure of certain securities lending arrangements.

We considered whether the Proposed Amendments may make take-over bids more expensive since an offeror's ability to obtain a toe-hold without disclosure would be reduced to below 5%. However, we understand that generally offerors do not currently purchase more than 5% before a bid on the basis that such purchases may move the market and the identity of the offeror would become known.

Early warning disclosure at 5% can benefit potential offerors because of the possibility of identifying, for lock-up agreements, securityholders that hold 5% of the target securities. As well, the earlier disclosure benefits securityholders who would otherwise have sold at a lower price while the acquiror was purchasing securities. A further benefit to decreasing the reporting threshold to 5% is that it would give issuers more time to defend against a potential offeror or activist shareholder.

Local Matters

Where applicable, Annex D is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. Do you agree with our proposal to maintain the requirement for further reporting at 2% or should we require further reporting at 1%? Please explain why or why not.
2. A person cannot acquire further securities for a period beginning at the date of acquisition until one business day after the filing of the report. This trading

moratorium is not applicable to acquisitions that result in the person acquiring beneficial ownership of, or control or direction over, 20% or more of the voting or equity securities on the basis that the take-over bid provisions are applicable at the 20% level.

The proposed decrease to the early warning reporting threshold would result in the moratorium applying at the 5% ownership threshold. We believe that the purpose of the moratorium is still valid at the 5% level because the market should be alerted of the acquisition before the acquiror is permitted to make additional purchases.

(a) Do you agree with our proposal to apply the moratorium provisions at the 5% level or do you believe that the moratorium should not be applicable between the 5% and 10% ownership levels? Please explain your views.

(b) The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.

(c) Do you think that a moratorium is effective? Is the exception at the 20% threshold justified? Please explain why or why not.

3. We currently recognize that accelerated reporting is necessary if securities are acquired during a take-over bid by requiring a news release at the 5% threshold to be filed before the opening of trading on the next business day.

   With the Proposed Amendments to the early warning reporting threshold, we do not propose to further accelerate early warning reporting during a take-over bid.

   (a) Do you agree? Please explain why or why not.

   (b) If you disagree, how should we accelerate reporting of transactions during a take-over bid? Should we decrease the threshold for reporting *changes* from 2% to 1%? Or do you think that requiring early warning reporting at the 3% level is a more appropriate manner to accelerate disclosure? Please explain your views.

4. The Proposed Amendments would apply to all acquirors including EIIs.

   (a) Should the proposed early warning threshold of 5% apply to EIIs reporting under the AMR system provided in Part 4 of NI 62-103? Please explain why or why not.

   (b) Please describe any significant burden for these investors or potential benefits for our capital markets if we require EIIs to report at the 5% level.

5. Mutual funds that are reporting issuers are not EIIs as defined in NI 62-103 and are therefore subject to the general early warning requirements in MI 62-104. Are there any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% or does the burden of reporting at 5% outweigh the potential benefits? Please explain why or why not.

6. As explained above, we propose to amend the calculation of the threshold for filing early warning reports so that an investor would need to include within the early warning calculation certain equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. These provisions would only capture derivatives that *substantially replicate* the economic

consequences of ownership and would not capture partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). Do you agree with this approach? If not, how should we deal with partial-exposure instruments?

7. We propose changes to NP 62-203 in relation to the definition of equity equivalent derivative to explain when we would consider a derivative to substantially replicate the economic consequences of ownership of the reference securities. Do you agree with the approach we propose?

8. Do you agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving the securities of the reporting issuer? Are these the appropriate circumstances to disqualify an EII? Please explain, or if you disagree, please suggest alternative circumstances.

9. We propose to exempt from early warning requirements acquirors that are lenders in securities lending arrangements and that meet certain conditions. Do you agree with this proposal? Please explain why or why not.

10. Do you agree with the proposed definition of "specified securities lending arrangement"? If not, what changes would you suggest?

11. We are not proposing at this time an exemption for persons that borrow securities under securities lending arrangements as we believe securities borrowing may give rise to empty voting situations for which disclosure should be prescribed under our early warning disclosure regime. Do you agree with this view? If not, why not?

12. Do the proposed changes to the early warning framework adequately address transparency concerns over securities lending transactions? If not, what other amendments should be made to address these concerns?

13. Do you agree with our proposal to apply the Proposed Amendments to all reporting issuers including venture issuers? Please explain why or why not. Do you think that only some and not all of the Proposed Amendments should apply to venture issuers? If so, which ones and why?

14. Some parties to equity equivalent derivatives may have acquired such derivatives for reasons other than acquiring the referenced securities at a future date. For example, some parties to these derivatives may wish to maintain solely an economic equivalency to the securities without acquiring the referenced securities for tax purposes or other reasons. Would the proposed requirement lead to over-reporting of total return swaps and other equity equivalent derivatives? Or would the possible over-reporting be mitigated by the fact that it is likely that parties to equity equivalent derivatives would qualify under the AMR regime?

15. If the proposed new requirement does lead to an over-reporting of these derivatives, is this rectified by the requirement in the early warning report for acquirors to explain the purpose of their acquisition and thereby clarify that they do not intend to acquire the referenced securities upon termination of the swap?

How to provide your comments

Please provide your comments in writing by **June 12, 2013**. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word, Windows format.

Please address your submission to the CSA as follows:

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

Deliver your comments **only** to the two addresses that follow. Your comments will be distributed to the other participating CSA.

Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Content of Annexes

Annex A sets out the proposed amendments to MI 62-104

Annex B sets out the proposed changes to NP 62-203

Annex C sets out the proposed amendments to NI 62-103

Annex D sets out local matters

Questions

Please refer your questions to any of:

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