

ANNEX A.1

SUMMARY OF COMMENTS ON CSA PROPOSAL

The following is a general summary of comments received on the CSA Proposal, including comments received that relate to aspects of the Proposed Bid Amendments. The summary does not review comments on specific or technical aspects of the CSA Proposal since the CSA has determined to proceed with the Proposed Bid Amendments as an alternative to that proposal.

The CSA Proposal put forward a framework for the regulation of security holder rights plans adopted by boards of directors of offeree issuers in response to unsolicited bids. Under the proposal, an offeree board could maintain a security holder rights plan if a majority of the equity or voting securities of the offeree issuer (excluding the securities of the offeror and its joint actors) were voted in favour of such plan, either in the face of the unsolicited bid or at the offeree issuer's previous annual meeting.

1. General Comments

We invited comments on whether the CSA Proposal was preferable to the status quo.

We received comments that both supported and disagreed with the proposal.

- Many commenters said that the CSA Proposal was preferable to the status quo. They noted that the current regime has led to inconsistent decisions and the timing of the termination of a security holder rights plan by securities regulators is uncertain.
- Other commenters indicated that the CSA Proposal was not preferable to the status quo as it would discourage bids or prevent bids from going to security holders for consideration, or lead to management entrenchment at the expense of security holders. Many of these commenters felt that shareholders, as owners of a corporation, were best placed to determine what is in their best interest and should be left with the decision to tender their securities to a take-over bid.

2. Appropriate Security Holder Approval Period

The CSA Proposal did not specifically include a proposal for a minimum bid period as contemplated by the Proposed Bid Amendments. However, the CSA Proposal allowed for an approval period of 90 days for security holder rights plans and invited comments on whether the 90-day period was appropriate.

We received the following comments on that proposal:

- Some commenters suggested that a 90-day period was not long enough. They recommended that the period provided to a board of directors to obtain shareholders' approval under the CSA Proposal be increased to 120 days. In their view, the 90-day period could be insufficient to complete the due diligence required in an auction process.
- Other commenters believed that 90 days was too long. These commenters indicated that the proposed 90-day period could result in additional delays and financing costs for offerors, which, in turn, could result in fewer unsolicited take-over bids.
- Several commenters believed that a period of 90 days would ordinarily provide sufficient time for a board of directors of an offeree issuer to seek alternatives to a hostile bid, to obtain the highest reasonably available price for its securities and to assess the offer. They were of the view that a

90 day period would not have a significant effect on the willingness of hostile offerors to make bids.

3. Board Discretion

We asked in the CSA Proposal whether the discretion given to a board of directors under the proposal was appropriate. Some of the views expressed included the following:

- Many commenters agreed that, as under the CSA Proposal, shareholders should have the ultimate decision over whether to maintain a security holder rights plan. They expressed concern that boards may use security holder rights plans, even temporarily, as an entrenchment mechanism.
- Many commenters felt that, in general, the discretion given to boards of directors under the CSA Proposal was appropriate and would afford offeree boards more time to exercise their fiduciary duties. However, a few commenters were concerned that, under the CSA Proposal, a board of directors could maintain a “just say no” security holder rights plan between annual general meetings unless the shareholders requisitioned a special meeting to terminate the rights plan.
- Several commenters stated that the CSA Proposal unduly restricted the board of directors’ discretion and did not adequately empower boards of directors. In their view, allowing shareholders to ratify the board of directors’ decision to adopt a security holder rights plan by way of shareholder vote did not constitute a sufficiently “hands-off” approach.

4. Structure of Take-over Bids in Canada

We invited comments on whether the CSA Proposal would have any negative impact on the structure of take-over bids in Canada.

Most commenters agreed that the CSA Proposal would not unduly discourage or impose serious impediments to the making of unsolicited bids. They added that, in their view, the CSA Proposal would result in more negotiated bids.

Many commenters indicated that the CSA Proposal would likely lead to more proxy contests, which they anticipated would be time- and resource-consuming for the offeror and the offeree issuer.

Many commenters stated general concerns about the quality of votes obtained under the proxy system in Canada. Consequently, they believed that voting results might not accurately reflect shareholders’ views.

5. Role of Securities Regulators

We also invited comments on whether the CSA Proposal would reduce the need for securities regulators to review security holder rights plans through public interest hearings.

Some commenters agreed that the number of hearings might decrease but, in their view, the involvement of securities regulators would continue, albeit in other circumstances.

Some commenters believed that the CSA Proposal would address current concerns relating to arbitrary and inconsistent results from regulatory intervention, while others noted that it was unclear as to what circumstances might engage the public interest jurisdiction of securities regulators under the CSA Proposal.