

BY E-MAIL

September 27, 2015

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

To the attention of:

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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 2S8
Email: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

RE: *Comments on Proposed Amendments to Multilateral Instrument 62-104 Take-over Bids and Issuer Bids and Proposed Changes to National Policy 62-203 Take-over Bids and Issuer Bids*

The following comments are submitted in response to the Notice and Request for Comments (the "Request for Comments") published by the Canadian Securities Administrators (the "CSA") on March 31, 2015 with respect to the proposed amendments (the "Proposed Bid Amendments") to Multilateral Instrument 62-104 *Take-over Bids and Issuer Bids* and National Policy 62-203 *Take-over Bids and Issuer Bids*.

Following discussions with representatives of the Ontario Securities Commission, these comments are submitted notwithstanding the fact that the comment period has expired. This letter represents my own personal comments (and not those of the law firm at which I am an associate (Stikeman Elliott LLP) or of any client of the firm) and is submitted without prejudice to any position taken or that may be taken by the firm on its own behalf or on behalf of any client. These comments are submitted only with respect to the matters dealt with herein and, given the expiry of the comment period, I have not addressed any of the specific questions outlined in the Request for Comments or provided any comments on the Proposed Bid Amendments generally.

The Proposed Bid Amendments would require that all non-exempt take-over bids remain open for a minimum deposit period of at least 120 days (the “120 Day Requirement”) subject to certain exceptions in the case of a “deposit period news release” or a news release that is issued by an issuer in respect of an “alternative transaction”.

The purpose of this letter is to highlight for the CSA that the 120 Day Requirement may result in the compulsory acquisition provisions of certain corporate statutes not being available to offerors following a take-over bid where the 120 Day Requirement is required to be adhered to by the offeror.

For example, under the compulsory acquisition provisions of the *Canada Business Corporations Act* (the “CBCA”), the right to acquire shares under such provisions is available only where “within one hundred and twenty days after the date of a take-over bid the bid is accepted by the holders of not less than ninety per cent of the shares of any class of shares to which the take-over bid relates...” (subsection 206(2) of the CBCA). The corporate statutes of most provinces of Canada contain substantially similar provisions.¹

Reducing the 120 Day Requirement by a modest amount - say to 115 or 110 days - would likely not address the issue, as in practice, it is uncommon for an offeror to receive deposits of shares under a take-over bid representing 90% or more of the outstanding shares of a target at the initial expiry time of a bid. It is more common for an offeror, who has received deposits under a bid representing less than 90% of the outstanding shares but more than the minimum tender condition (i.e. 50% or 66 2/3%), to take up shares following the initial expiry time of the bid, announce the initial results and extend the bid on at least one occasion in an effort to obtain deposits of shares at or above the 90% threshold in order to use the compulsory acquisition provisions of the relevant corporate statute to acquire the remaining shares.

In light of the above, the CSA should consider the consequences of implementing the 120 Day Requirement vis-à-vis the compulsory acquisition provisions of corporate statutes as waiting for amendments to the various corporate statutes to enable the 120 Day Requirement to work in conjunction with the compulsory acquisition provisions of corporate statutes is likely not a viable/timely solution.

Thank you for the opportunity to comment on these proposals.

Regards,

“Mike Devereux”

Mike Devereux

¹ See for example: *Business Corporations Act* (Ontario), ss. 188(1); *Business Corporations Act* (Alberta), ss. 195(2); *Business Corporations Act* (Québec), s. 398; *Business Corporations Act* (British Columbia), ss. 300(2)(b) (within 4 months); *Business Corporations Act* (Saskatchewan), s. 188.