DENTONS

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

T +1 416 863 4511
F +1 416 863 4592

Salans FMC SNR Denton
dentons.com

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BY E-MAIL

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
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 2S8

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

Dear Sirs/Mesdames:

Re: Proposed Amendments to Early Warning System

This letter is in response to the CSA Notice and Request for Comment issued on March 13, 2013 with respect to proposed changes to the early warning system contained in Multilateral Instrument 62-104 (“MI 62-104”), corresponding Ontario legislation, National Policy 62-203 and National Instrument 62-103 (“NI 62-103”).

We do not have major substantive issues with any of the proposed changes except for the reduction in the reporting threshold with respect to venture issuers (as defined in National Instrument 51-102). We support the views of those commentators who have expressed concern that the negative implications for liquidity and capital-raising in the junior market from the lowering of the reporting threshold would outweigh the benefits to that market.

Apart from the changes being proposed, in our view the review of the early warning system that is being undertaken provides the Canadian Securities Administrators with the opportunity to address certain long-standing technical and other issues relating to the system. Some of our comments below are directed to those matters.

1. In addition to excluding from the definition of "acquiror" a person who acquires securities by way of a public take-over bid, consider also excluding an acquiror by way of an amalgamation, merger, reorganization or arrangement that requires approval in a vote of the subject issuer's security holders. There is already ample disclosure regarding these transactions before they take place, and it would appear that the rationale for their exclusion from the "acquiror" definition would be the same as for public take-over bids. In addition, this change would address the current inconsistency among legal advisors in the interpretation of whether, in light of the deemed beneficial ownership provisions in the take-over bid legislation, the early warning requirement is triggered in the context of an agreement providing for a business combination transaction that is typically subject to a number of conditions, including shareholder approval.

2. We can see no policy basis for excluding mutual funds that are reporting issuers from the definition of "eligible institutional investor".

3. Clause 9.1(1)(a) of NI 62-103 needs to be updated to reflect the 2010 change in the insider reporting requirement from 10 days after the end of the month in which the trade occurs to five or 10 days from the date of the trade. The update is necessary because in most cases the insider report would be due before the Part 4 report is due. A possible fix may be to change the clause to the following: "the eligible institutional investor files the report under the early warning requirements or Part 4 in connection with the transactions for which the insider report would otherwise be required".

4. Similarly, subsection 9.1(4) of NI 62-103 needs to be updated because the references to the "previous month" are no longer appropriate now that the due date for filing insider reports can, and usually does, fall in the same month in which the applicable trade takes place. This issue might be addressed by permitting the insider report that is required under this subsection to be filed within five or 10 days after the end of the month on which the trade took place.

5. Clause 10.1(4)(a) of NI 62-103 appears to be unnecessary because the moratorium provisions only apply in respect of a filing under the early warning requirements, from which an eligible institutional investor that files under section 4.1 is explicitly exempted.

6. Consider including in the definition of "acquiror" in proposed subsection 5.1(1) of NI 62-104 a person who acquires control or direction over a security. Otherwise, it is arguable that a person who has control or direction of securities of a class but does not own any of them is not technically an "acquiror" and therefore is not subject to the early warning requirements with respect to that class.

7. In subsection 5.2(2) of MI 62-104 and the proposed new subsection 5.2(3), the words "that was the subject of the most recent report required to be filed by the acquiror under this section" are problematic where the issuer has more than one class of equity securities. For example, if a filing is made with respect to Class A Shares and then there is a 2% change only in the filer's ownership of

Class B Shares, subsection 5.2(2) technically appears to require no filing. Consider replacing "most recent" with "prior" in proposed subsection 5.2(2) and replacing "the most recent" with "a prior" in proposed subsection 5.2(3).

8. There is some confusion as to how the early warning requirement applies when an acquiror both buys and sells securities of the same class. If, for example, a person acquires 13% of the outstanding securities of a class, duly files an early warning report, falls to 12% and then goes up to 14%, it is not entirely clear whether that person is required to file another early warning report. The reporting requirement where an acquiror who already owned more than 10% of the outstanding securities of a class at the time the issuer became a reporting issuer subsequently increases its position is also not universally understood.

   To enhance the clarity and usefulness of the early warning system, we suggest that consideration be given to:

   (a) making subsection 5.2(1) of MI 62-104 explicitly applicable to the circumstance where a person that, with any joint actors, beneficially owns or controls (collectively, "holds") less than 5% of the outstanding securities of a class subsequently increases its holding to 5% or more; and

   (b) making subsection 5.2(2) of MI 62-104 explicitly applicable to the circumstance where a person that holds 5% or more of the outstanding securities of a class, including a person who had not previously filed an early warning report because the holding existed at the time the issuer became a reporting issuer, subsequently increases or decreases its holding by 2 or more percentage points above or below the level disclosed in the person's immediately preceding early warning report in respect of the same class of securities, or the level at the time the issuer became a reporting issuer if no previous early warning report from the person was required with respect to that class of securities.

9. While it is not a major point, it is not clear to us why in the proposed new forms the acquiror is required to state the address of the principal office of the issuer.

10. Consider incorporating the information required in Item 3.5 of Form 62-103F1 into Item 3.1 to make the form more user and reader friendly.

11. In Item 3.10 of proposed Form 62-103F1 and the corresponding items in the other proposed new forms, we suggest adding the words "other than as set out above".

12. In proposed Forms 62-103F1 and 62-103F2, we suggest that Items 4.1 and 4.2 be combined into a single section to eliminate duplication and that the reference to a premium to the market price be explicitly confined to trades that are not on a published market. For trades on a published market, the concept of a market premium is unlikely to be meaningful to investors. Moreover, the acquisition or disposition that is the subject of the filing will often be by way of multiple trades in the published market, and the "premium to the market price" is not readily determinable in that context. Also, we note that "market price" is not defined, and we suggest that a definition be included, perhaps cross-referencing to the take-over bid legislation.

Thank you for considering these comments. If you wish to discuss them, please contact Ralph Shay at 416-863-4419 or Guy Paul Allard at 514-878-8876.

Yours truly,

“Dentons Canada LLP”