

**NOTICE OF NATIONAL POLICY 62-202
AND RESCISSION OF NATIONAL POLICY STATEMENT NO. 38
TAKE-OVER BIDS - DEFENSIVE TACTICS**

Notice of National Policy

The Commission has adopted National Policy 62-202 Take-Over Bids - Defensive Tactics and rescinded National Policy Statement No. 38 Take-Over Bids - Defensive Tactics.

National Policy 62-202 comes into force and National Policy Statement No. 38 is rescinded on August 4, 1997.

Substance and Purpose of National Policy

The purpose of the National Policy is to set out the views of the Canadian securities regulatory authorities on take-over bid defensive tactics. The Canadian securities regulatory authorities are prepared to examine target company tactics in specific cases to determine whether they are abusive of shareholder rights. If the Canadian securities regulatory authorities become aware of defensive tactics that are likely to deny or limit severely the ability of shareholders to respond to a take-over bid or a competing bid, they will take appropriate action.

The National Policy is an initiative of the Canadian Securities Administrators (the "CSA") and is being adopted as a policy in all the jurisdictions represented by the CSA. The National Policy is substantially similar to National Policy Statement No. 38 - Take-Over Bids - Defensive Tactics, which it replaces. No material substantive changes have been made to National Policy Statement No. 38.

Terms used in the National Policy that are defined or interpreted in a definition instrument in force in the jurisdiction should be defined or interpreted in accordance with that definition instrument, unless the context otherwise requires.

Summary of National Policy

The National Policy sets out the view of the Canadian securities regulatory authorities on take-over bid defensive tactics. The Canadian securities regulatory authorities are of the view that the take-over bid provisions of Canadian securities legislation should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are prepared to examine target company tactics in specific cases to determine whether they are abusive of shareholder rights and, if they become aware of defensive tactics that are likely to deny or limit severely the ability of shareholders to respond to a take-over bid or to a competing bid, they will take appropriate action. The National Policy also provides that prior shareholder approval of corporate action would, in appropriate cases, allay the concerns of the Canadian securities regulatory authorities.

Summary of Written Comments Received by the Commission

One comment letter was received on the proposed National Policy.

The commenter states that the following two statements currently contained in National Policy No. 38 and proposed to be maintained in the National Policy are inconsistent with the unfettered exercise of directors' fiduciary duties:

1. unrestricted auctions produce the most desirable results; and
2. securities administrators will take appropriate action when they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid.

The commenter indicates that the fiduciary standard required by corporate law requires that directors exercise discretion on an unfettered basis, subject only to the exercise of due care and the obligation to act in good faith and that this is consistent with the business judgement rule. The commenter indicates that following the National Policy could, in some circumstances, be contrary to the proper exercise of directors' fiduciary responsibilities. The commenter is of the view that in the regulation of Canadian capital markets, securities regulators will inevitably have to exercise a corporate law jurisdiction and that in so doing the oversight should be reviewed on the basis of the fiduciary standard, without pre-judging certain fundamental matters.

Response of the CSA

The CSA do not believe that the two statements in the National Policy are necessarily inconsistent with the unfettered exercise of directors' fiduciary duties. The National Policy sets out the CSA's views on unrestricted auctions and allowing shareholders to respond to a bid. As a general rule, that is the standard which is consistent with the CSA's mandate of protecting the integrity and promoting the efficiency of the Canadian capital markets in the context of take-over bids.

National Policy

National Policy Statement No. 38 is replaced by the National Policy and will be rescinded effective August 4, 1997. The text of the National Policy follows.

Text of Rescission of National Policy Statement No. 38

The text of the rescission of National Policy Statement No. 38 is:

"National Policy Statement No. 38 entitled "Take-over Bids - Defensive Tactics" is rescinded."

DATED: July 4, 1997.