CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 61-303 and Request for Comment
Soliciting Dealer Arrangements

April 12, 2018

Introduction

This notice outlines certain issues that staff of the Canadian Securities Administrators (**CSA**) have identified with respect to the use of soliciting dealer arrangements. Staff are publishing this notice for a 60-day comment period to better understand these arrangements to aid the CSA in assessing whether any additional guidance or rules in respect of those arrangements would be appropriate. In addition to any general comments, we also invite comments on the specific questions set out at the end of the notice.

Substance and Purpose

(a) Soliciting dealer arrangements

"Soliciting dealer arrangements" generally refer to agreements entered into between issuers and one or more registered investment dealers under which the issuer agrees to pay to the dealers a fee for each security successfully solicited from securityholders to: (i) vote in connection with a matter requiring securityholder approval, or (ii) tender securities in connection with a take-over bid. These arrangements may also be used to incentivize dealers to contact securityholders to participate in a rights offering or exercise rights to redeem or convert securities, or otherwise in connection with corporate transactions to attain the requisite quorum for amendments to documents affecting the rights of securityholders.

The fees for soliciting dealer arrangements are typically subject to a minimum or maximum. In a number of cases, the payment of any fee is contingent on "success" and/or only if a securityholder votes in a particular manner (e.g., only "for" or only "against" a transaction).

(b) Use of soliciting dealer arrangements

Recently, there have been instances of soliciting dealer arrangements in connection with contested director elections, the most prominent examples being the 2013 proxy contest initiated by JANA Partners LLC for Agrium Inc. and the 2017 proxy contest initiated by PointNorth Capital Inc. for Liquor Stores N.S. Ltd. In each of those proxy contests, the issuer made payments to soliciting dealers only for votes cast in favour of the election of its own incumbent nominee directors and the soliciting dealer fees would only be paid if the incumbent slate was elected.

We understand that the use of soliciting dealer arrangements is not uncommon in take-over bids and plan of arrangement transactions. In a take-over bid transaction, the bidder may retain a dealer manager to form a group of soliciting dealers who receive compensation for soliciting securityholders to tender to the bid. In a plan of arrangement, either the target or the purchaser may pay the soliciting dealers a fee per security for securities voted in favour of the transaction.

One rationale that issuers have given for entering into soliciting dealer arrangements is that it may be difficult to reach out to, and communicate directly with, retail investors who are objecting beneficial owners (**OBOs**) under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**). While proxy solicitation firms retained by an issuer may be able to communicate with non-objecting beneficial owners, and may have insights with respect to holdings by significant holders, they are not able to contact retail OBOs.

(c) IIROC rules

Rule 42 *Conflicts of Interest* (**Rule 42**) of the Investment Industry Regulatory Organization of Canada (**IIROC**) imposes obligations on each "Approved Person" and each "Dealer Member", in the event an existing or potential material conflict of interest has been identified. While IIROC indicates that its rules do not create a fiduciary standard, its rules do require that any material conflict be considered and addressed in a "fair, equitable and transparent manner, and consistent with the best interest of the client or clients". If the material conflict of interest cannot be addressed in this manner, Rule 42 provides that the conflict must be avoided. Where a conflict has not been avoided, it must be disclosed to the client in all cases where a reasonable client would expect to be informed. However, IIROC guidance indicates disclosure alone does not resolve a conflict.

(d) Canadian proxy solicitation rules

National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) prohibits any person or company from engaging in proxy solicitation without mailing to securityholders a proxy circular containing prescribed information. "Solicit" is defined broadly to include "requesting a securityholder to execute or not execute a form of proxy" and "sending other communication to a securityholder under circumstances that to a reasonable person will likely result in the giving, withholding or revocation of a proxy".

NI 51-102 provides certain exclusions from the definition of "solicit", such as

- performing ministerial or professional services on behalf of a person or company soliciting a proxy;

- sending, by an intermediary as defined in NI 54-101, the documents referred to in NI 54-101; and

- communicating, *provided that the communication is not a solicitation by or on behalf of management of the reporting issuer* [emphasis added], with securityholders as clients, by a person or company who gives financial, corporate governance or proxy voting advice in the ordinary course of business, provided that

    - the person or company discloses to the securityholder any significant relationship with the reporting issuer and any material interests the person or company has in relation to a matter on which advice is given,
    - the person or company only receives a special commission or remuneration from the recipients of the advice, and
    - the advice is not given by or on behalf of any person or company soliciting proxies.

(e) Regulatory issues with soliciting dealer arrangements

Soliciting dealer arrangements raise certain securities regulatory issues. From the perspective of the dealer, they raise issues respecting appropriate management of conflicts of interest as well as risks associated with potential solicitations of proxies. From the perspective of the issuer, soliciting dealer arrangements raise public interest-related questions as to whether those arrangements affect the integrity of the tendering process or securityholder vote, including by potentially being used to entrench the board and management.

Request for Comments

We welcome your comments and feedback on the use of soliciting dealer arrangements. In addition to any general comments you may have, we also invite comments on the following specific questions.

General

1. In what circumstances are soliciting dealer arrangements most typically used?

2. What are the principal reasons for entering into soliciting dealer arrangements?

3. Are soliciting dealer arrangement fees typically only paid in respect of votes “for” management’s recommendations? Is that appropriate in all circumstances? Is there a reason to distinguish proxy contests in this regard?

4. Are soliciting dealer arrangements important to the ability of issuers to contact retail OBOs?

Investment dealers and dealing representatives

5. Do you think that the potential conflict of interest on the part of an investment dealer or a dealing representative can be effectively managed?

    a. If so, what steps should an investment dealer take to appropriately manage or avoid the conflict of interest? What steps should a dealing representative take, beyond disclosure, to appropriately manage or avoid the conflict of interest?

    b. Does the answer differ depending on whether the transaction is
        i. a take-over bid tender,
        ii. a securityholder vote in relation to a merger or acquisition transaction,
        iii. a securityholder vote to amend the terms of a security, or
        iv. a securityholder vote in the context of a proxy contest?

    c. In the context of a securityholder vote in relation to a merger and acquisition transaction, does the answer to #5 differ depending on whether the fee is contingent on the securityholder voting in favour of the transaction and/or the transaction being approved?

    d. In the context of a proxy contest, does the answer to #5 differ if the fee is contingent on the securityholder voting in favour of management's nominees and/or management's nominees being elected?

    e. What type of communication and disclosure by investment dealers and dealing representatives should be made to the securityholder respecting the existence of a soliciting dealer arrangement?

6. Do you think that there are circumstances in which it would never be appropriate for an investment dealer to enter into a soliciting dealer arrangement? If so, please discuss what such circumstances would be.

7. Are soliciting dealer fees paid to investment dealers and/or dealing representatives in connection with securities held in managed accounts? If so, in what circumstances?

8. How can investment dealers and dealing representatives participating in a soliciting dealer arrangement in respect of a proxy contest ensure compliance with the proxy solicitation rules?

9. Are investment dealers and/or dealing representatives involved in proxy contests where a proxy solicitation firm has been retained?

10. Do you believe that an investment dealer or a dealing representative has a responsibility to encourage its client to respond to proxy solicitations, rights offerings, take-over bids or other corporate transactions such as conversion of convertible securities?

Issuers

11. Are there circumstances in which you think it would be contrary to the public interest or inconsistent with a board of directors' fiduciary duties for an issuer to

    a. enter into a soliciting dealer arrangement?
    b. retain a proxy solicitation firm?

    If so, please discuss what such circumstances would be.

12. Can a board of directors comply with its fiduciary duties if it pays soliciting dealer fees for all votes, including votes that are contrary to the board's recommendation as to what is in the best interests of the corporation?

13. Are there particular transactions which give rise to more or less concern with respect to the use of soliciting dealer arrangements, e.g.,

    a. a take-over bid tender,
    b. a securityholder vote in relation to a merger and acquisition transaction,
    c. a securityholder vote in relation to a merger and acquisition transaction, where the fee is contingent on the securityholder voting in favour of the transaction and/or the transaction being approved
    d. a securityholder vote in the context of a proxy contest, or
    e. a proxy contest, where the fee is contingent on the securityholder voting in favour of management's nominees and/or management's nominees being elected.

14. What type of communication and disclosure should an issuer make to securityholders respecting the existence of a soliciting dealer arrangement?

Please submit your comments in writing on or before June 11, 2018. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all members of the CSA as follows:
Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please deliver your comments *only* to the addresses below. Your comments will be distributed to the other participating members of the CSA.

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christopher.peng@asc.ca

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

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Ontario Securities Commission at www.osc.gov.on.ca and the Autorité des marchés financiers (www.lautorite.qc.ca). Therefore, if you do not want it published, you should not include personal information directly in your comments. It is important that you state on whose behalf you are making the submission.

Questions

Please refer your questions to any of the following:

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ADDENDA CAPITAL

June 29, 2018

Sent via electronic mail

Alberta Securities Commission
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British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o

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Re: CSA Staff Notice 61-303 and Request for Comment *Soliciting Dealer Arrangements*

Dear Sirs and Mesdames:

We have reviewed CSA Staff Notice 61-303 and Request for Comment *Soliciting Dealer Arrangements* and we thank you for the opportunity to provide our comments.

Addenda Capital Inc. is a privately owned investment management firm responsible for investing more than $27 billion in assets for pension funds, insurance companies, foundations, endowment funds and third party mutual funds of major financial institutions. Addenda Capital supports the integrity and sustainability of financial markets through collaborative investor initiatives and public policy, regulatory and standards submissions.

General comments

We believe that soliciting dealer arrangements can be in the public interest for some shareholder votes and to encourage the tendering of securities. We also agree that these arrangements raise certain securities regulatory issues. In particular, arrangments where any fee or consideration is contingent on the securityholder taking a specified action give rise to a number of possible conflicts (such as between a dealer and its clients or between a director and their corporation's best interests). As such, we support the prohibition of soliciting dealer arrangments in all instances where the fee or other consideration is contingent on "success" and/or on a specific action taken by a securityholder.

Thank you for the opportunity to comment on CSA Staff Notice 61-303 *Soliciting Dealer Arrangements*. If you would like to discuss our comments, please do not hesitate to contact me at +1 647-253-1029 or b.minns@addendacapital.com.

Yours Sincerely,

Brian Minns, CFA
Manager, Sustainable Investing

June 7, 2018

BY EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
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Dear Sirs/Mesdames:

Re: **CSA Staff Notice 61-303 and Request for Comment – Soliciting Dealer Arrangements (the "Consultation")**

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to provide the following general comments on the Consultation.

[1]The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

We are concerned with soliciting dealer arrangements where investment dealers are compensated for successfully soliciting a vote in favour of a matter requiring security holder approval, whereby security holders may be persuaded to vote in a manner which, in their unique circumstances, is unfavourable to them.

The Consultation notice indicates that issuers have argued it may be difficult to reach out to retail investors who are objecting beneficial owners, and we understand why issuers would like to increase engagement during particular votes. However, by tying the dealer fee to the success of soliciting a particular vote, rather than for making the beneficial holder aware of the upcoming meeting or regardless of the vote cast, it creates a material conflict of interest for the dealers. The arrangement may comprise the dealers' ability to offer unbiased advice to shareholders as the advice is not independent of financial gain and thus firms may be benefitting from the assets of their clients in a manner that does not reflect their clients' best interests. These conflicts may not be controllable or dealt with appropriately through disclosure.

At a minimum, investment dealers and their representatives should provide clear and prominent disclosure to investors respecting the existence of a soliciting dealer arrangement, as well as details with respect to the fee arrangement. Guidance could be taken from the requirements of Division 3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") with respect to referral arrangements, which raises some similar conflict of interest issues for registrants. For example, s. 13.10 of NI 31-103 would require disclosure of information such as any conflicts of interest resulting from the relationship between the parties to the agreement, the method of calculating the referral fee and, to the extent possible, the amount of the fee, as well as any other information that a reasonable client would consider important in evaluating the referral arrangement.

In addition to the conflicts raised, the issues with respect to security holder voting mechanism are more widespread. The proper functioning of the proxy voting system, including accurate vote tracking and entitlement attribution, is, in our view, an essential part of our capital markets. A well run proxy voting system contributes to investor confidence and the integrity of our markets. We have previously expressed our concerns with respect to the proxy voting infrastructure as a whole, including with respect to CSA Multilateral Staff Notice 54-304 *Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols*, which were intended in part to set out responsibilities for parties such as intermediaries to enhance the accuracy of the vote reconciliation process. Other issues

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[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 155,000 members in 165 countries, including more than 148,900 CFA charterholders and 149 member societies. For more information, visit www.cfainstitute.org.

that have been identified include the fact that intermediaries, including dealers, may not have consistently accurate records relating to vote entitlements at the outset, resulting in inaccurate information floating down the chain. We look forward to additional guidance from the CSA in this important area.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for Canadian CFA Institute Societies*

The Canadian Advocacy Council for Canadian CFA Institute Societies

Canadian Coalition for
GOOD GOVERNANCE
THE VOICE OF THE SHAREHOLDER

June 19, 2018

British Columbia Securities Commission
Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
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Ontario Securities Commission
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consultation-en-cours@lautorite.qc.ca

Dear Madam/Sir:

Re: CSA Staff Notice 61-303 and Request for Comment
Soliciting Dealer Arrangements

We have reviewed the CSA Staff Notice 61-303 and Request for Comment *Soliciting Dealer Arrangements* ("Request for Comment") released April 12, 2018 and we thank the Canadian Securities Administrators ("CSA") for the opportunity to provide you with our comments.

CCGG's members are Canadian institutional investors that together manage approximately $4 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to promote the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

Overview

CCGG is pleased that the CSA is undertaking a review of issues associated with soliciting dealer arrangements. When issuers pay dealers a fee for securities successfully solicited from shareholders in connection with a shareholder vote or tendering to a takeover bid, the arrangements can give rise from the perspective of issuers and, of course, their shareholders, to public interest-related concerns that the integrity of the shareholder vote or tendering process is affected. From the dealers' perspective, the arrangements can also give rise to conflict of interest issues.

CCGG has publicly condemned[1] the practice of soliciting dealer arrangements in the context of proxy contests where an issuer's board of directors has authorized the payment of fees to dealers contingent on shareholders voting their shares in a particular manner or on a specific outcome, namely, only if the shareholders vote in favour of the issuer's board nominees and/or only if the board nominees are successfully elected. CCGG views such 'vote -buying' arrangements as unethical and likely inconsistent with directors' fiduciary duty by using company resources to entrench themselves. Such arrangements are always unacceptable.

The Request for Comment also seeks comment on soliciting dealer arrangements more broadly: (i) regardless of whether the payment of fees is contingent on a particular vote or outcome, and

[1] "Agrium payments don't pass the 'smell test'", Globe and Mail, July 4, 2013 here

(ii) in contexts other than proxy contests such as take-over bids and merger or acquisition transactions. In this submission, we provide our views on the narrower issue of 'vote buying' in proxy contests as well as on the appropriateness of soliciting dealer arrangements in other circumstances. In addition to general comments, we provide responses to specific questions in the Request for Comment that we believe fall appropriately within CCGG's expertise and mandate.
Note that we follow the numbering found in the Request for Comment and do not answer every question.

The justification for soliciting dealer arrangements

Soliciting dealer arrangements are sometimes justified on the basis that without them it can be challenging for issuers to contact retail objecting beneficial owners to encourage them to vote and also to encourage shareholders to vote in order to meet quorum requirements: on that rationale, paying dealers to solicit shareholders' votes is a matter of ensuring that shareholders exercise their franchise, an uncontroversial benefit for both issuers and shareholders. Of course, this goal is furthered regardless of whether payment of soliciting dealer fees are contingent on the manner in which the franchise is exercised or the final vote outcome. Payments made to simply "get the vote out" – and that are not conditional on voting for a particular end (for the existing board of directors, for example) - avoid ethical issues around the integrity of the vote and potential conflicts of interest. Accordingly, CCGG has no objections to soliciting dealer arrangements where the sole purpose is to get shareholders to exercise their franchise and the arrangements are not structured in a way that is intended to influence the vote or tender. We suggest that adopting this standard is a simple and straightforward way to avoid the ethical issues associated with soliciting dealer arrangements, from the perspectives of issuers, shareholders and dealers, while meeting the legitimate objectives of such arrangements.

Investment dealers and dealing representatives

Soliciting dealer arrangements in line with the standard set out above do not raise ethical issues for investment dealers and dealing representatives. It is our view, however, that when investment dealers and dealing representatives enter into soliciting dealer arrangements pursuant to which payment is contingent on eliciting a certain vote from the dealer's client, a potential conflict of interest is created between the dealers or representatives and the client. This conflict does not abate where different divisions of the same parent entity are involved in advising the client and soliciting their vote – the ultimate source of the dealer's access to the shareholder is the advisor/shareholder client relationship. The relationship is the reason that shareholders will listen to the dealer's voting recommendations in the first place. In that relationship, dealers have an obligation to work in the client's interests; in these circumstances, that means that any voting recommendation must be intended to enhance the value of the share to which the vote is attached. If compensation is tied to the recommendation, it becomes impossible for all practical purposes to confidently determine whether the recommendation is

untainted by potential conflict. Potential conflict is not resolved by a dealer's sincere belief that the voting recommendation offered is in fact the best option for enhancing share value. It is impossible to police or gauge that sincerity and far better to remove the potential conflict.

5. *Do you think that the potential conflict of interest on the part of an investment dealer or a dealing representative can be effectively managed?*

The only kind of disclosure that could approach sufficiently addressing this potential conflict of interest would be impractical and impossible to monitor. The dealers or representatives would have to disclose in every solicitation conversation the facts that they are being paid to encourage the client to vote in a certain way, who is paying them, the amount and any minimums or maximums and whether fees are contingent on how the client votes. Even if this high standard of disclosure is met, human nature being what it is, it is unlikely that the information being offered by the dealer can be entirely objective and free from being influenced by knowledge of the source of compensation. So, as stated above, CCGG believes that the simpler and better solution is to remove the conflict and prohibit one-sided soliciting dealer arrangements as the only way of effectively managing the potential conflict. In fact, we understand that the investment and broker arms of at least one of Canada's largest banks has already taken the step of forbidding such arrangements. We see no reason why this should not become the practice at all financial institutions by making this result a regulatory requirement. Importantly, regulation of this sort can in no way be viewed as increasing regulatory burden.

We have heard the argument that the amounts involved for investment dealers and representatives in soliciting dealer arrangements are so small that they are unlikely to influence them to go against their principles and try to solicit votes which they do not already think are the right way to go. We make two comments in connection with this argument: (i) if soliciting dealer arrangements do not work, common sense suggests that they would not exist and (ii) we have been told that while proxy solicitation fees (which are disclosed in the proxy circular and do not present the same potential conflicts of interest) average around $35,000, it costs approximately $150,000 to set up a soliciting dealer arrangement, which is not a negligible amount and too much to spend if issuers do not believe in their efficacy.

b. *Does the answer differ depending on whether the transaction is*
(i) a take-over bid tender,
(ii) a securityholder vote in relation to a merger or acquisition transaction,
(iii) a securityholder vote to amend the terms of a security or
(iv)a security holder vote in the context of a proxy context?

While CCGG prefers that a universal standard apply, CCGG is of the view that in cases of hostile takeover tenders both the bidder and the target company may be permitted to enter one-sided soliciting dealer arrangements provided that there is full and complete disclosure of the

payments by each side as described above. An argument can be made that hostile take-over bid tenders differ in relevant ways from other forms of transactions for purposes of assessing whether contingent payments are acceptable or pose ethical obstacles. In the case of hostile take over tenders, the bidder will have issued a dissident proxy circular which will be countered by management's circular so that access to the arguments and rationale of both sides is publicly available. Since the hostile bidder will typically enter into soliciting dealer arrangements in order to encourage the target shareholders to tender to the bid, it could be argued that the target company should be able to level the playing field by soliciting votes for its position.

However, in the situations referred to in (ii) to (iv) above, one-sided soliciting dealer arrangements should be prohibited.

> *(c) in the context of a securityholder vote in relation to a merger and acquisition transaction, does the answer to #5 differ depending on whether the fee is contingent on the securityholder voting in favour of the transaction and/or the transaction being approved?*

See above.

> *(d) in the context of a proxy contest, does the answer to #5 differ if the fee is contingent on the securityholder voting in favour of management's nominees and/or management's nominees being elected?*

See above

> *(e) What type of communication and disclosure by investment dealers and dealer representatives should be made to the securityholder respecting the existence of a soliciting dealer arrangement?*

See above

6. do you think that there are circumstances in which it would never be appropriate for an investment dealer to enter into a soliciting dealer arrangement? If so, please discuss what such circumstances would be?

As discussed above, it is never appropriate for an investment dealer to enter into a soliciting dealer arrangement where the fees paid are dependent on a particular vote or outcome, with the possible exception of hostile takeover bids and only then if full disclosure is made by the dealer in each individual solicitation.

10. do you believe that an investment dealer or a dealing representative has a responsibility to encourage its client to respond to proxy solicitations, rights offerings, take-over bids, or other corporate transactions such as conversion of convertible securities?

Investment dealers have a responsibility to protect and enhance their clients' investments. CCGG believes that the shareholder franchise is an important part of share value and thus the dealer should encourage shareholders to exercise that franchise as part of protecting that value.

Issuers

As discussed above under Overview, CCGG believes that, from the issuer's perspective as well as the shareholder's, the practice of issuers paying dealers for soliciting in proxy contests only when a vote or outcome is favourable to the issuer's director nominees is not ethical. Further, in other transactions (such as mergers and acquisitions or amending the terms of a security), because the position is being recommended by management and there will inevitably be benefits for management and the board to some extent over the path the issuer is not recommending, a conflict arises that is similar to, but less egregious or obvious, than that which arises in proxy contests. It is therefore appropriate that one-sided soliciting dealer arrangements be prohibited in situations other than proxy contexts as well, with the possible exception of hostile takeover bids. Paying dealers fees regardless of the nature of the vote or outcome, however, is acceptable.

Specific questions

11. *Are there circumstances in which you think it would be contrary to the public interest or inconsistent with a board of directors' fiduciary duties for an issuer to:*

a. Enter into a soliciting dealer arrangement?

It is contrary to the public interest and inconsistent with a board of directors' fiduciary duties to enter into any soliciting dealer arrangements where the payment of fees is conditional on the direction or outcome of the vote or tender, with the possible exception of hostile takeover bids (see below).

12. Can a board of directors comply with its fiduciary duties if it pays soliciting dealer fees for all votes, including votes that are contrary to the board's recommendation as to what is in the best interest of the corporations?

The question reflects a misunderstanding of the respective roles and obligations of the board and shareholders. Corporate and securities statutes establish that certain decisions ultimately belong to shareholders: the right to elect directors, to tender to a bid, to approve a merger or acquisition, etc. The board's role in these circumstances is circumscribed: while directors may recommend a particular course of action and use the company's resources to communicate that recommendation, the decision ultimately belongs to shareholders. As far as CCGG is aware, directors' duties do not require them to ensure that shareholders vote or tender in a specific way. If our understanding is correct, then there would not be a breach of fiduciary duty

if a board pays soliciting dealer fees that are not one-sided and are intended simply to encourage shareholders to exercise their franchise as they see fit.

13. Are there particular transactions which give rise to more or less concern with respect to the use of soliciting dealer arrangements, e.g.,

a. a take-over bid tender

b. a securityholder vote in relation to a merger and acquisitions transaction

c. a securityholder vote in relation to a merger and acquisition transaction, where the fee is contingent on the securityholder voting in favour of the transaction and/or the transaction being approved.

d. a securityholder vote in the context of a proxy contest, or

e. a proxy context, where the fee is contingent on the securityholder voting in favour of management's nominees and/or management's nominees being elected.

From the perspective of issuers and shareholders, the use of soliciting dealer arrangements by hostile bidders differs from target issuers with respect to hostile take-over bids, in that the bidder paying the fees under the arrangement does not have a fiduciary duty to the shareholders whose support is being sought. Consequently, the ethical problem with conditional payments with respect to the bidder's arrangements is restricted to the relationship between the soliciting dealer and the shareholder as the client.

14. what type of communication and disclosure should an issuer make to securityholders respecting the existence of a soliciting dealer arrangements?

Assuming that one-sided soliciting dealer arrangements are prohibited (with the possible exception of hostile takeover bids, for which the appropriate disclosure is described above), for all other soliciting dealer arrangements issuers should provide full disclosure to shareholders of the arrangements in the proxy circular that describes the issue or transaction to which the arrangements relate: the amount of fees and all material terms of payment (any minimums or maximums etc.).

Conclusion

In summary, CCGG has no objections to soliciting dealer arrangements that pay fees for returning a vote or tender provided that the fees are not contingent on shareholders voting a particular way or tendering or on a specific outcome. We believe that arrangements pursuant to which fees are payable only if the vote or outcome goes a certain way should be prohibited for the reasons outlined above, with the possible exception of hostile takeover tenders.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Director of Policy Development, Catherine McCall at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,

Julie Cays, CFA
Vice-Chair of the Board
Canadian Coalition for Good Governance

CCGG MEMBERS – June 2018

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund (ATRF)
Archdiocese of Toronto
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Ltd.
Burgundy Asset Management Ltd.
Caisse de dépot et placement du Québec
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Asset Management Inc.
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management Ltd.
Desjardins Global Asset Management
Fiera Capital Corporation
Franklin Templeton Investments Corp.
Galibier Capital Management Ltd.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Hillsdale Investment Management Inc.
Investment Management Corporation of Ontario (IMCO)
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada
Northwest & Ethical Investments L.P. (NEI Investments)
OceanRock Investments Inc.
Ontario Municipal Employee Retirement System (OMERS)
Ontario Teachers' Pension Plan (OTPP)
OPSEU Pension Trust
PCJ Investment Counsel Ltd.
Pier 21 Asset Management Inc.
Pension Plan of the United Church of Canada Pension Fund
Pier 21 Asset Management Inc.
Public Sector Pension Investment Board (PSP Investments)
QV Investors Inc.
RBC Global Asset Management Inc.
Régimes de retraite de la Société de transport de Montréal (STM)
Scotia Global Asset Management
Sionna Investment Managers Inc.

State Street Global Advisors, Ltd. (SSgA)
Sun Life Institutional Investments (Canada) Inc.
TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
University of Toronto Asset Management Corporation
Vestcor Inc.
Workers' Compensation Board - Alberta
York University

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June 11, 2018

BY E-MAIL

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

Dear Sirs/Mesdames:

Re: CSA Staff Notice 61-303 and Request for Comment – *Soliciting Dealer Arrangements*

We are writing in response to CSA Staff Notice 61-303 and Request for Comment – *Soliciting Dealer Arrangements* issued on April 12, 2018, pursuant to which the Canadian Securities Administrators (CSA) requested comments regarding certain issues identified by staff in respect of the use of soliciting dealer arrangements in proxy contests and corporate transactions. We appreciate the opportunity to provide this comment letter and hope that our submissions will be of assistance.

Use of Soliciting Dealer Arrangements

Merger and Acquisition Transactions

Soliciting dealer arrangements first gained prominence in the context of take-over bids. Under these arrangements, all members of the Investment Industry Regulatory Organization of Canada (IIROC) are invited to form a soliciting dealer group by the bidder or the issuer in order to encourage shareholders to tender their shares to the offer. The broker-dealers participating in the soliciting dealer group are compensated, on a commission basis, based on the number of shares their respective clients tender to the offer. The primary purpose of these arrangements is to increase the likelihood that the minimum tender condition will be satisfied. Minimum tender conditions typically require that at least two-thirds of the shares be tendered to the offer such that the bidder can take up enough shares under the take-over bid to carry out a subsequent acquisition transaction and become the sole shareholder of the issuer.

The formation of soliciting dealer groups in the context of take-over bids is premised on the assumption that most broker-dealers will not proactively reach out to their clients to obtain instructions on whether to tender their shares to an offer unless they receive some form of financial incentive. This was especially true prior to the widespread use of the book-based system currently maintained by CDS Clearing and Depository Services Inc. (CDS), when many shareholders held their shares in certificated form. At the time, the tendering process was much more labour-intensive than it is today and soliciting dealer fees helped offset the back-office costs associated with submitting letters of transmittal and surrendering share certificates in connection with tendering shares to a take-over bid.

Our experience is that the ability of retail shareholders to tender their shares electronically through the procedures for book-entry transfer established by CDS, coupled with the ever-increasing stake that institutional shareholders hold in public issuers, has significantly reduced the use of soliciting dealer arrangements in take-over bids. The practice of establishing a soliciting dealer group has become a fairly rare occurrence limited to target issuers with a substantial retail shareholder base.

We are also aware of situations where soliciting dealer groups have been formed by bidders or issuers in the context of merger and acquisition transactions that proceed by way of plan of arrangement. However, our experience is that this practice is quite infrequent. The soliciting dealer fees paid in the context of these corporate transactions are similar to those paid in connection with take-over bids, with broker-dealers typically receiving a commission for each vote cast by their respective clients in favour of the approval of the transaction. While the level of shareholder participation required for a quorum at a shareholders' meeting called to consider a plan of arrangement is rarely an obstacle to these transactions, like take-over bids, soliciting dealer arrangements can serve to increase shareholder participation and the level of shareholder approval for the transaction. Soliciting dealer arrangements are more likely used in this context for tactical purposes in order to encourage votes in the favour of, or against, a contested plan of arrangement, including in situations where there are competing offers for control of the issuer.

Contested Director Elections

We are aware of three instances where soliciting dealer arrangements have been entered into in connection with a Canadian proxy contest for the election of the directors of an issuer:

1. Octavian Advisors, LP's efforts to elect four of the eight directors of Enercare Inc. in 2012;
2. JANA Partners LLC's efforts to elect five of the 12 directors of Agrium Inc. in 2013; and
3. PointNorth Capital Inc.'s efforts to elect six of the eight directors of Liquor Stores N.A. Ltd. (now Alcanna Inc.) in 2017.

In all three of these proxy contests, the issuer entered into soliciting dealer arrangements to help secure the election of its entire slate of nominees. These arrangements all provided for the payment of a commission (subject to specified minimum and maximum amounts) to each broker-dealer for each vote cast by its clients in favour of the issuer's nominees, and conditional on all of the issuer's nominees being elected.

The approach to disclosure taken by each issuer in respect of the soliciting dealer arrangements entered into in connection with these proxy contexts varied in several noteworthy ways.

Each of Enercare and Liquor Stores issued a press release announcing, among other things, the formation of a soliciting dealer group a little less than two weeks prior to its shareholders' meeting. Enercare stated in its press release that a soliciting dealer group had been formed to solicit proxies on its behalf and disclosed the fees payable to the broker-dealers for each vote cast against Octavian's proposal. The management information circular prepared by Enercare in connection with the meeting was not amended or supplemented to include information about the soliciting dealer arrangements.

The press release issued by Liquor Stores stated that the broker-dealers would be compensated for time spent reaching out to their clients to alert them of the importance of voting in favour of Liquor Store's nominees, but failed to disclose the amount of the soliciting dealer fees or the conditions associated with their payment. Liquor Stores only disclosed the specifics of the fees payable to the broker-dealers in a supplement to its management information circular, which was filed shortly after the issuance of its press release.

Agrium did not issue a press release or update its management information circular upon the formation of its soliciting dealer group. The public only learned of Agrium's soliciting dealer arrangements 18 days after the arrangements were entered into, when they were brought to JANA's attention. JANA immediately issued a press release disclosing such arrangements, including the fees payable to the broker-dealers should Agrium's entire slate of nominees be elected. It should be noted that JANA became aware of Agrium's soliciting dealer arrangements on a holiday weekend with only five days remaining prior to the proxy cut-off for the shareholders' meeting.

Considerations in Contested Director Elections

We are of the view that the CSA should primarily be concerned with the potential issues that arise in connection with the use of soliciting dealer arrangements in contested director elections. The following paragraphs set out certain key considerations that we have identified that arise in such proxy contests, from the perspectives of each of (i) the directors and officers of the issuer, (ii) the dissident shareholders, and (iii) the broker-dealers.

Directors and Officers

The decision whether to use corporate resources to enter into soliciting dealer arrangements in contested director elections must ultimately be made by the directors and officers of an issuer in a manner consistent with the discharge of their fiduciary duties.

Reasonable expenses incurred by an issuer in the normal course to prepare disclosure aimed at informing its shareholders of the recommendations of the board of directors in response to a dissident shareholder proposal would generally be considered a proper use of corporate resources. This would customarily include retaining legal counsel, financial advisors, proxy solicitors, public relations firms and any other advisors that the board of directors might, in its proper business judgment, deem necessary to help it articulate its views and analysis and advance its recommendation to shareholders. There are,

however, limits to this authority and the actions taken by the directors and officers in response to a dissident shareholder proposal must be consistent with their statutory and common law duties.

When directors are responsible for overseeing a proxy contest in respect of their own re-election, an inherent conflict of interest arises that casts doubts as to whether it is in the best interests of the issuer to use corporate resources to compensate broker-dealers to secure votes solely in favour of their re-election. The election of the directors who will be charged with overseeing the business and affairs of the issuer is the purview of the shareholders, and any actions that could reasonably lead to the entrenchment of the current directors are unlikely to be in the best interests of the issuer.

In *Blair v. Consolidated Enfield Corp.*, the Supreme Court of Canada held that the best interests of an issuer in the context of a contested shareholders' meeting "centre solely on the maintenance of the integrity and propriety of the voting procedure".[1] Although this case dealt with the conduct of the chairman at a contested shareholders' meeting, this principle also helps guide the conduct of directors and officers leading up to the meeting, including in respect of the manner in which proxies are solicited.

The payment of soliciting dealer fees by an issuer solely to secure votes in favour of the election of its nominees could be viewed as undermining the integrity of the voting process. The financial incentives created by such fees could unduly influence certain broker-dealers and encourage them to advise their clients to cast votes in favour of the issuer's entire slate of nominees, irrespective of their own independent assessment of the dissident shareholder proposal or whether they are of the view that the re-election of the issuer's nominees would be in the best interests of their clients.

The fees paid by an issuer to broker-dealers under soliciting dealer arrangements should be distinguished from the fees paid by an issuer to a proxy solicitation firm. A proxy solicitor is typically compensated based on the number of outgoing calls made to shareholders, whereas broker-dealers participating in a soliciting dealer group are compensated based on the number of votes actually cast by their clients. Although both fees are ostensibly paid to help the issuer secure proxies in favour of the election of its nominees, a major difference lies in the relationship between the intermediaries and the shareholders. A proxy solicitor is clearly an agent of the issuer and is generally recognized as such. A broker-dealer, on the other hand, is more likely viewed by its client as his or her own objective trusted advisor. As a consequence, shareholders are much more likely to defer to the advice of a broker-dealer than a proxy solicitor with whom they are unlikely to have an existing relationship. Many retail shareholders view their broker-dealer as a trusted advisor and are likely to act on its advice, regardless of whether the broker-dealer has disclosed that it may receive a commission if the shareholder submits a proxy in favour of the issuer's nominees.

If an issuer has legitimate concerns that its retail shareholders would be unable to adequately participate in a contested director election without the formation of a soliciting dealer group, many of the concerns expressed in the preceding paragraphs could be overcome by paying the soliciting dealer fees to the broker-dealers irrespective of how their clients vote. This would abate any concerns that the

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1 [1995] 4 S.C.R. 5 at para. 43.

directors are improperly using corporate resources to entrench themselves. In addition, the consideration offered to the broker-dealers could incentivise them to proactively reach out to their clients and provide them with unbiased advice on how to vote. This in turn, would foster participation by "objecting beneficial owners" (OBOs) – shareholders not directly identifiable or reachable by the issuer – consistent with the principle of shareholder democracy, a purpose frequently proffered to justify soliciting dealer arrangements.

An issuer that has entered into soliciting dealer arrangements in connection with a shareholders' meeting is required to adequately disclose the particulars of such arrangements, including the fees payable to the broker-dealers and the circumstances in which such fees will be paid, in accordance with its continuous disclosure obligations under National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102). This would include issuing a press release setting out this information and filing and delivering a management information circular (or a supplement) in connection with the shareholders' meeting containing the information necessary to comply with applicable corporate and securities laws prior to the broker-dealers beginning to reach out to their clients to solicit their proxies on behalf of management. Given the approach taken in the Enercare, Agrium and Liquor Stores proxy contests, we are of the view that a pronouncement by the CSA to this effect is warranted. In addition, we believe that the CSA should provide guidance regarding the timing of such disclosure to ensure that shareholders have sufficient time to consider the information and make a fully-informed decision on that basis. Ensuring timely disclosure is especially important given the complexity of the issues under consideration and the delays often associated with intermediaries and beneficial shareholders submitting and revoking proxies or voting information forms.

Dissident Shareholders

We are not aware of a proxy contest in Canada where dissident shareholders have formed a soliciting dealer group to help secure votes from other shareholders for their director nominees. That said, there are currently no barriers that would prevent dissident shareholders from entering into soliciting dealer arrangements.

Dissident shareholders are differently situated than issuers in contested director elections. Dissident shareholders are not constrained by fiduciary duties owed to other shareholders or the issuer. Nor are they using other shareholders' resources; instead, they are using their own resources to advance proposals in an effort to institute corporate change, the costs of which can be significant for the dissident (while the benefits of a successful outcome accrue to all shareholders). They are thus able to act in a self-interested manner. The success of the dissident shareholders is typically dependent on them being able to communicate their plans to, and secure the support of, the issuer's other shareholders, in circumstances where the dissident shareholders may not have the same access to information in respect of the issuer and its stakeholders as the issuer itself. As a result, many of the considerations that an issuer's directors and officers must take into account when considering soliciting dealer arrangements are not applicable to dissident shareholders.

That said, from the perspective of the broker-dealer, as discussed below, the payment of soliciting dealer fees by a dissident shareholder to a broker-dealer solely to secure votes in favour of the election of the dissident's nominees presents the same conflict of interest issues for the broker-dealer and

potential to undermine the voting process as when such fees are paid by an issuer solely to secure votes in favour of its nominees. As previously mentioned, the financial incentives created by such fees have the potential to unduly influence broker-dealers and encourage them to advise their clients to vote their shares in favour of the dissident nominees, regardless of their own independent assessment of the dissident proposal.

We are also of the view that dissident shareholders should be held to similar disclosure standards as issuers, which would include the requirement to issue timely and sufficiently detailed press releases and proxy circulars as necessary to comply with applicable corporate and securities laws prior to the broker-dealers being able to reach out to their clients to solicit their proxies in favour of dissident nominees.

Broker-Dealers

Once a soliciting dealer group has been formed, broker-dealers must consider and address any conflicts of interest that might arise as a result of the consideration they will receive for votes cast by their clients. IIROC Rule 42 – *Conflicts of Interest* provides that broker-dealers must address "existing or potential material conflicts of interest in a fair, equitable and transparent manner, and considering the best interests of the client." If a material conflict of interest cannot be addressed in this manner, IIROC Rule 42 requires that the conflict be avoided. Broker-dealers are also required under IIROC Rule 42 to disclose material conflicts of interest in all cases where a reasonable client would expect to be informed. IIROC Notice 17-0093 – *Managing Conflicts in the Best Interest of Clients – Compensation-related Conflicts Review* confirms that disclosure alone is not sufficient to address all material conflicts in accordance with IIROC Rule 42, particularity conflicts related to broker-dealer compensation.

Broker-dealers who accept compensation to facilitate votes only in favour of one side of a contested director election may put themselves in a position of material conflict of interest that prevents them from providing unbiased advice to their clients. Since soliciting dealer arrangements are typically structured such that all members of IIROC are invited to participate in the soliciting dealer group, these arrangements have the potential to preclude a significant portion of an issuer's retail shareholders from obtaining unbiased advice on how to vote in a contested director election.

As previously discussed, broker-dealers are in a position of trust *vis-à-vis* their clients, who are likely to defer to their advice irrespective of whether they are aware that the broker-dealers will be receiving a fee if they vote their shares in a particular fashion. Broker-dealers must therefore first consider whether they can adequately address any material conflicts of interest that might arise as a result of their participation in a soliciting dealer group in light of their professional obligations under IIROC Rule 42. If a broker-dealer, after evaluating the circumstances, concludes that a particular conflict of interest is not material or, if it is, that such conflict of interest can be adequately addressed in accordance with IIROC Rule 42, we believe that the disclosure provided to their clients should, at a minimum, confirm that the broker-dealer will be receiving a fee if its clients cast votes in favour of certain director nominees, the amount of such fee and any associated conditions.

Corporate and securities laws prohibit anyone from soliciting proxies without sending a proxy circular containing prescribed information to shareholders. The definition of "solicitation" is very broad and includes a request that a shareholder "execute or not execute a form of proxy" and the sending of any communication to a shareholder "under circumstances that to a reasonable person will likely result in the giving, withholding or revocation of a proxy." [2]

Communications between a broker-dealer and its clients aimed at facilitating votes in a contested director election constitute proxy solicitation. As a result, broker-dealers must either comply with, or be exempt from, the proxy solicitation rules, including the requirement to provide shareholders with a proxy circular setting out, among other things, the material terms of their engagement and the anticipated costs.

An exemption from the definition of "solicitation" set out in NI 51-102 is available to market participants who provide "financial, corporate governance or proxy voting advice in the ordinary course of business."[3] The purpose of this exemption is to enable such market participants to provide their clients and the public with proxy voting advice without having to prepare a proxy circular. Broker-dealers are generally able to rely on this exemption given the nature of their business. However, this exemption is not available to broker-dealers participating in soliciting dealer arrangements, given that the carve-outs to the exemption preclude (i) solicitations conducted by or on behalf of management or dissident shareholders, and (ii) the receipt of any special commission or remuneration other than from the shareholders receiving the proxy advice.

Accordingly, broker-dealers participating in soliciting dealer arrangements will be in breach of the proxy solicitation rules unless the issuer or the dissident shareholders who formed the soliciting dealer group include the applicable disclosure in their proxy circular or an amendment thereto prior to the broker-dealers beginning to reach out to their clients. We are of the view that a specific pronouncement by the CSA to this effect is warranted in light of the pre-disclosure solicitations by broker-dealers and other timing and disclosure deficiencies described above in the Enercare, Agrium and Liquor Stores proxy contests.

We note that regulators in the United States have taken a much stricter approach to interpreting the proxy solicitation provisions set out in SEC Rules 14a-1 and 14a-2 under the Securities the Exchange Act of 1934, which are similar to those in NI 51-102. The predecessor to the Financial Industry Regulatory Authority (FINRA) issued Notice 92-33 – *Providing of Proxy Voting Advice to Customers* in May 1992 confirming that broker-dealers "may not receive special compensation for furnishing the advice from any person other than the customer and may not rely on the safe harbor if the advice is being furnished on behalf of anyone who is actively soliciting proxies or on behalf of a person who is a participant in an election contest subject to SEC Rule 14a-ll [now SEC Rule 14a-12]."

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2 See generally Part 9 of NI 51-102; see also Section 147 of the *Canada Business Corporations Act* (CBCA) and Section 109 of the *Business Corporations Act* (Ontario) (OBCA).

3 A similar exemption is also available in Section 68(1) of the *Canada Business Corporations Regulations* and Section 29.2(3) of Ont. Reg. 62 under the OBCA.

Considerations in Corporate Transactions

The following paragraphs set out certain other considerations that we have identified that arise in merger and acquisition transactions and other corporate transactions where a soliciting dealer group is formed, from the perspectives of each of (i) the directors and officers of the issuer, (ii) the bidders or dissident shareholders, and (iii) the broker-dealers.

Directors and Officers

The payment of soliciting dealer fees in the context of corporate transactions generally does not give rise to the same fiduciary duty concerns as it does in contested director elections. Although M&A transactions often give rise to conflicts of interest and entrenchment considerations, law and practice have evolved to the point where actual or perceived conflicts are typically well managed through the use of independent committees, independent financial advisors, independent legal counsel and the delivery of fairness opinions. In this way these transactions can be distinguished from contested director elections. As result, provided that the directors have complied with their statutory and common law duties, deference should be given to their business judgment, including any decision to compensate broker-dealers to facilitate tenders or votes in favour of the proposed transactions.

However, the payment of soliciting dealer fees by an issuer may have the potential to create a conflict of interest and cast doubt as to whether it is in the best interests of the issuer to use corporate resources to secure tenders or votes for a particular transaction in the context of certain types of corporate transactions. Such concerns could arise in a contested corporate transaction where fees are only paid to broker-dealers who secure tenders to a specific take-over bid or votes in favour of a particular plan of arrangement favoured by management in the face of a competing transaction or where shareholders oppose the transaction proposed by management. In these circumstances, the payment of soliciting dealer fees in support of management's favoured transaction may be inappropriate because of its potential to undermine the integrity of the voting or tendering process.

While certain contested transactions may give rise to concerns similar to those that arise for issuers in the context of contested director elections, we are of the view that such cases will be fact-specific and depend on a multitude of factors, including the nature of and circumstances surrounding the transactions in question and the process and protections implemented by the issuer and its directors to review, evaluate and make recommendations concerning the transactions. Accordingly, we do not believe a bright-line rule or blanket test concerning soliciting dealer arrangements should be applied in the context of corporate transactions. Rather, we are of the view that securities regulatory authorities and/or Canadian courts have the ability to intervene, and should intervene, on a case-by-case basis if soliciting dealer arrangements are used in a particular transaction in an abusive or oppressive manner, or otherwise give rise to public interest or public policy concerns.

In cases where concerns may arise, we are of the view that such concerns could, absent special circumstances, be overcome if an issuer is trying to increase retail shareholder participation by structuring the soliciting dealer arrangements so that the broker-dealers would receive fees for any and all tenders or votes secured from their clients.

We are also of the view that an issuer that enters into soliciting dealer arrangements should be required disclose the full particulars of the arrangements, including the fees payable to the broker-dealers and the circumstances in which such fees will be paid, in a timely fashion. We believe that adequate framework for such disclosure currently exist under NI 51-102 and National Instrument 62-104 – *Take-Ove Bids and Issuer Bids* (NI 62-104). However, as with contested director elections, we are supportive of the CSA providing guidance regarding the content and timing of such disclosure to ensure shareholders have sufficient time and information to make a fully-informed decision.

Bidders and Dissident Shareholders

There are currently no barriers to bidders (including hostile bidders) or dissident shareholders entering into their own soliciting dealer arrangements. Given that these arrangements originated in the context of merger and acquisition transactions, the formation of a soliciting dealer group is a tool that has long been available to bidders in their efforts to gain control of an issuer. Although our experience is that dissident shareholders are far less likely to enter into soliciting dealer arrangements, the considerations arising in the context of bidders and dissident shareholders are similar and primarily relate to conflicts of interest for the broker-dealers. Obviously, the concerns regarding breach of fiduciary duty, entrenchment and use of shareholder resources do not apply here.

As a result, soliciting dealer arrangements entered into by a bidder or dissident shareholder should be assessed on a case-by-case basis in light of their potential to undermine the voting or tendering process. There may be particular types of corporate transactions, such as competing contests for control of an issuer or where a dissident opposes a particular transaction proposed by management of the issuer, where the use of soliciting dealer arrangements by a dissident or bidder may give rise to concerns or have the potential for abuse. However, as stated above, we are of the view that this will depend on the particular facts and circumstances of each case. Accordingly, securities regulatory authorities and/or Canadian courts should rely on their respective jurisdictions to intervene if and when soliciting dealer arrangements are used by dissidents or bidders in an abusive manner, or otherwise give rise to public interest or public policy concerns.

In any case, bidders and dissident shareholders should be held to similar disclosure standards as issuers in respect of their soliciting dealer arrangements.

Broker-Dealers

Many of the considerations previously expressed in this comment letter regarding the participation of broker-dealers in soliciting dealer arrangements in the context of contested director elections also apply in corporate transactions. More specifically, broker-dealers who accept compensation to facilitate tenders to a take-over bid or votes only in favour of one side of a contested transaction may put themselves in a position of conflict of interest *vis-à-vis* their clients. This gives rise to public interest concerns given that many retail shareholders rely on their broker-dealers as trusted advisors for unbiased advice.

The financial incentives created by the fees payable under soliciting dealer arrangements have the potential to unduly influence broker-dealers and prevent them from providing their clients with unbiased advice based on their own objective analysis of the proposed transactions. This is particularly the case in contested transactions where broker-dealers are compensated only for shares tendered or votes cast in favour of a particular transaction. Broker-dealers must therefore evaluate in the circumstances the materiality of any conflicts of interests and whether they can adequately address such conflicts of interest in light of their professional obligations. If broker-dealers are of the view that such conflicts of interest can be adequately addressed in accordance with IIROC Rule 42 and related guidance, we believe that at minimum they should be required to clearly disclose that they will be receiving a fee (and the particulars thereof) if their clients act on their advice.

Although the proxy solicitation concerns previously raised are not directly applicable in the context of take-over bids, they apply in all corporate transactions that require shareholder approval, including merger and acquisition transactions that proceed by way of plan of arrangement. Accordingly, broker-dealers participating in soliciting dealer arrangements must ensure that the issuer, the bidder or the dissident shareholders that formed the soliciting dealer group have included the prescribed disclosure in their proxy circular. Otherwise, all correspondences between the broker-dealers and their clients regarding the voting of shares in respect of the proposed transactions will be in violation of the proxy solicitation rules.

Conclusions and Recommendations

We would be supportive of limiting the use of soliciting dealer arrangements in the context of contested director elections to scenarios where the issuer or the dissident shareholder forming the soliciting dealer group agreed to pay the soliciting dealer fees to broker-dealers irrespective of how their clients vote. We believe that this is warranted given the fiduciary duty and entrenchment concerns that arise in connection with issuer's use of soliciting dealer arrangements in contested director elections. While the same concerns do not apply with respect to a dissident shareholder, this approach would ensure that the integrity of the voting process is maintained as broker-dealers would not be in a potential position of conflict of interest *vis-à-vis* their clients and could provide them with unbiased advice.

However, we do not believe that a similar approach is warranted in respect of the use of soliciting dealer arrangements by issuers, bidders or dissident shareholders in the context of corporate transactions. While there may be scenarios where the use of soliciting dealer arrangements would give rise to fiduciary duty and conflict of interest concerns, or concerns that the voting or tendering process might be undermined, we are of the view that such scenarios are better addressed by securities regulatory authorities and/or Canadian courts on a case-by-case basis. In our view, these cases are most likely to arise in the context of certain types of contested corporate transactions, and will depend on the particular facts and circumstances of each case.

Given the approaches to disclosure taken in the Enercare, Agrium and Liquor Stores proxy contests, we believe that at a minimum the CSA should issue a staff notice providing market participants with guidance in respect of the disclosure obligations under NI 51-102 and NI 62-104. More specifically, we believe that an issuer, a bidder, or a dissident shareholder that forms a soliciting dealer group should be required to immediately issue and file a press release announcing its formation and disclosing the

full particulars of the soliciting dealer arrangements, including the amount of the soliciting dealer fees and any conditions associated with their payment. In addition, broker-dealers participating in a soliciting dealer group formed in connection with a matter to be considered at a shareholders' meeting should be advised that they will be in breach of the proxy solicitation rules unless the party who formed the soliciting dealer group includes the requisite disclosure in its proxy circular or an amendment thereto prior to the broker-dealers reaching out to their clients. We also believe that the CSA should provide guidance regarding the timing and content of the disclosure to be provided in respect of soliciting dealer arrangements to ensure that shareholders have sufficient time and information to make a fully-informed decision on that basis.

Finally, we believe that heightened responsibility should be placed on broker-dealers to assess whether they can adequately address any material conflicts of interest that might arise as a result of their participation in a soliciting dealer group in light of their professional obligations under IIROC Rule 42 and related guidance. Given the subjective nature of this analysis, we would be supportive of the CSA or IIROC providing broker-dealers with additional guidance in respect of how they should go about this analysis. If broker-dealers are of the view that any such conflicts of interest are not material or, if they are, can be adequately addressed, we believe that at minimum they should be required to clearly disclose to their clients that they are participating in a soliciting dealer group and will receive a fee if their clients vote their shares in a particular fashion or tender their shares to a specific take-over bid. The amount of the consideration to be received by the broker-dealers and any conditions associated with their payment should also be clearly disclosed to clients to ensure they are in a position to make an informed decision. We would also be supportive of the CSA or IIROC providing broker-dealers with guidance on how they should fulfill their disclosure obligations.

***** ***** *****

The following partners at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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Yours very truly,

Davies Ward Phillips & Vineberg LLP

INCLUDES COMMENT LETTERS

FAIR

Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

June 11, 2018

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

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RE: CSA Staff Notice 61-303 and Request for Comment - *Soliciting Dealer Arrangements*

FAIR Canada is pleased to respond to CSA Staff Notice 61-303 and Request for Comment - *Soliciting Dealer Arrangements.*

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. General Comments

1.1. We agree with staff of the Canadian Securities Administrators (CSA) that soliciting dealer arrangements raise a number of securities regulatory issues. We trust that the information and feedback sought by CSA staff in this Notice and Request for Comment will be of assistance in determining the appropriate additional rules and guidance for these types of arrangements. However, we do not believe further consultation is required with respect to the use of success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors of reporting issuers in proxy solicitations, such as EnerCare Inc., TELUS and Mason, JANA Partners and Agrium and Liquor Stores and PointNorth. The "vote buying" practices used in these proxy solicitations by boards of directors run afoul of dealer conflict of interest rules, raise concerns under proxy solicitation requirements, undermine the integrity of the securityholder voting process and require immediate remedial action by the CSA to prohibit their use.

1.2. We note that this Staff Notice and Request for Comment focuses on investment dealers, dealing representatives and issuers. We believe that the interests of retail investors and clients need to be part of the discussion of these practices going forward.

1.3. Any consideration of the Investment Industry Regulatory Organization of Canada (IIROC)'s Rule 42: *Conflicts of Interest*, in the context of success-only "VOTE FOR" soliciting dealer arrangements by boards of directors, must focus on the interests of the client. We believe that success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors in proxy solicitations present a material conflict for dealing representatives under Rule 42 which must be avoided and can not be adequately mitigated or managed, or resolved by disclosure alone. The need for these types of material conflicts to be avoided is increased by the lack of any standards, such as suitability, applicable to voting recommendations (in contrast to recommendations to purchase, sell, exchange or hold securities) by dealing representatives, leaving aside the question of their qualifications and level of proficiency for developing and making governance voting recommendations to clients.

1.4. In addition to the IIROC material conflict of interest issue, success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors in proxy solicitations raise concerns under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)'s proxy solicitation requirements regarding solicitation disclosure (sections 3.3 and 3.4 of Item 3 of Form 51-102F5-Information Circular) (e.g. Agrium and Liquor Stores information circulars) and with respect to

the breadth of NI 51-102's definition of "solicit" in relation to investment firm and dealing representative vote recommendation activities. We urge the CSA to clarify that by receiving commission or renumeration for soliciting votes, investment firms and dealing representatives would run afoul of the proxy solicitation requirements, as is the case under Rule 14a-2 of the United States Securities Exchange Act of 1934.

1.5. In conclusion, FAIR Canada requests the CSA to take immediate remedial action to prohibit the use of success-only "VOTE FOR" soliciting dealer fee arrangements by boards of directors of reporting issuers in proxy solicitations.

We thank you for the opportunity to provide our comments and views in this response. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at 647-256-6693/frank.allen@faircanada.ca, Marian Passmore at 647-256-6691/marian.passmore@faircanada.ca or Samreen Beg at 647-256-6692/Samreen.beg@faircanada.ca.

Sincerely,

Canadian Foundation for Advancement of Investor Rights

June 7, 2018

By Email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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Re: IAP Response to CSA Staff Notice 61-303 and Request for Comment - Soliciting Dealer Arrangements

I am writing on behalf of the Investor Advisory Panel (IAP), an initiative by the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule and policy making process. We welcome the opportunity to respond to CSA Staff Notice 61-303 and Request for Comment – Soliciting Dealer Arrangements ("the Notice").

Soliciting dealer arrangements are common in Canada, where bidders will often pay fees to dealers that incentivize securityholders to vote when security holder approval is required, or to tender securities connected to a merger or takeover bid. In some cases, soliciting dealer arrangements are used in contested director elections – a company will pay to incentivize dealers to advise their securityholder clients to vote in favour of management's director nominees. While the fees for soliciting dealers vary, in some cases they are contingent upon "success", meaning that they are payable only when a securityholder votes in a particular way.

As Canadian Securities Administrators (CSA) staff point out in this Notice, soliciting dealer arrangements at times may serve beneficial or necessary purposes. However, the IAP sees no circumstance in which the use of a "success fee" can be justified as necessary or beneficial for retail investors.

Success fees are offered for the sole purpose of incenting dealers and advisors to use their influence over clients in a manner intended to sway shareholder votes for the fee payer's benefit or toward the fee payer's objective. This practice gives rise to an obvious conflict of interest. Moreover, success fees, by design, shift advisors from a position of objectivity to one of partisanship, thereby degrading the value and benefit of their advice for investors.

It bears noting that rules relating to suitability do not address this problem. Suitability obligations apply only to recommendations for the purchase, sale, exchange or holding of a security.[1] Dealers and advisors are not subject to a regulatory requirement to ensure their voting recommendations are suitable for clients.

Nor can it be said that an adequate regulatory safeguard exists in the duty to advise "fairly, honestly and in good faith"[2]. That phrase, despite the breadth of its wording, has proved largely ineffective as a source of investor protection.

We do not believe conflicts of interest generated by success fees can be mitigated or managed. In particular, dealers and advisors cannot effectively advise their clients about the impact of those conflicts because success fees, by their very nature, disrupt and degrade the advisory relationship.

In the IAP's view it is imperative, in the context of soliciting dealer relationships, that success fees be banned. We urge the CSA to do so immediately.

Yours truly,

"Letty Dewar"

_____

Letty Dewar
Chair, Investor Advisory Panel

[1] See section 13.3 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and IIROC Dealer Member Rule 1300.1(p) and (q).
[2] See section 2.1 of OSC Rule 31-505 *Conditions of Registration* and equivalent provisions in other provinces and territories.

IIACACCVM
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June 11, 2018

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Dear Sirs and Mesdames:

Re: CSA Staff Notice 61-303 and Request for Comment – Soliciting Dealer Arrangements

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the above consultation. As the IIAC represents IIROC Dealer Members, our responses will be limited to the General and Investment Dealer Questions. Further, there are differences among Dealer Members' policies as to whether or not their firm will participate in soliciting dealer arrangements.

General Questions:

1. *In what circumstances are soliciting dealer arrangements most typically used?*

   Soliciting dealer arrangements are not very common. Historically, Issuers have approached Dealer Members to contact securityholders and encourage them to: vote in connection with matters requiring securityholder approval; tender securities in connection with a take-over bid or plan of

arrangement; to participate in a rights offering; or otherwise in connection with corporate transactions to in order to attain the requisite quorum for amendments to documents affecting the rights of securityholders.

2. *What are the principal reasons for entering into soliciting dealer arrangements?*

   Soliciting dealer arrangements are typically entered into because securities laws restrict the Issuer's ability to communicate with certain beneficial shareholders (objecting beneficial owners, "OBOs"). OBOs could represent a significant number of shareholders. In one recent instance, an Issuer stated they would be unable to communicate with 49% of their securityholders[1]. Without the ability to communicate with those shareholders, it could be very difficult to for a corporate action, like a take-over bid with a minimum tender requirement of 50% or $66^{2/3}$% to be successful. OBOs may be contacted by an intermediary, such as a Dealer Member or advisor, who can inform the shareholder about the corporate action. It is the lack of access to shareholders and the requirement for certain vote thresholds that cause soliciting dealer arrangements to be entered into.

3. *Are soliciting dealer arrangement fees typically only paid in respect of votes "for" management's recommendations? Is that appropriate in all circumstances? Is there a reason to distinguish proxy contests in this regard?*

   Dealer Members have said that there is typically a "success" requirement in the agreement that must be satisfied in order for the Dealer Member to receive the fees. As previously mentioned, these arrangements are typically non-controversial, common corporate actions such as a plan of arrangement. As we will discuss below, for most soliciting dealer arrangements, Dealer Members can manage the potential conflicts.

   The IIAC does recognize that a "for" or "success" fee may not be appropriate in all circumstances, and that there is reason to distinguish proxy contests from other common corporate actions like plans of arrangement or take-over bids.

4. *Are soliciting dealer arrangements important to the ability of issuers to contact retail OBOs?*

   Yes, as previously stated, we believe the inability of Issuers to contact OBOs is a primary reason that Issuers enter into soliciting dealer arrangements. Dealer Members stated that more clients are requesting to become OBOs.

Investment Dealers and Dealing Representatives Questions:

5. *Do you think the potential conflict of interest on the part of an investment dealer or dealing representative can be effectively managed?*

[1] **PointNorth Capital Inc.** decision, the Alberta Securities Commission (ASC).

a. *Is so, what steps should an investment dealer take to appropriately manage or avoid the conflict of interest? What steps should a dealing representative take, beyond disclosure, to appropriately manage or avoid the conflict of interest?*

Dealer Members take a number of steps that effectively manage potential conflicts related to soliciting dealer arrangements. Foremost, the potential fee that a Dealer Member may receive is not a significant source of revenue for the firm. Further for individual advisors, they may receive on average 0.05-0.25 per share with a maximum payout per client. The average client would be unlikely to have sufficient shares in a single issuer for an advisor to be receiving a substantial payout.

However, while the fees may not be significant, we understand there can be potential conflicts of interest that must be addressed. The overriding suitability obligations govern whether or not an advisor will recommend that a client tender or vote their shares. Dealer Members and advisors retain their discretion to make recommendations based on suitability even upon entering into a soliciting dealer arrangement. Dealer Members do not dictate that all advisors must instruct their clients to vote in a particular way, regardless of whether or not the Dealer Member would only receive fees for a certain outcome. One Dealer Member disclosed that their firm was part of a soliciting dealer group that would only receive fees if the corporate action was successful, and yet at least one of their internal advisor support teams recommended to their advisors that clients vote against the corporate action and not tender their securities. That was permitted by the Dealer Member as it was what was suitable for those clients. Another common example is that advisors might recommend the client sell the security rather than tender it in a takeover bid or other corporate action if they believe that is more suitable for the client.

In addition, there is disclosure to the client of the existence of soliciting dealer arrangements in shareholder communications documents (the type of communication depends on the corporate action) and the fee the Dealer Member and/or advisor received is disclosed in the annual CRM2 Fees and Compensation Report. Dealer Members acknowledge the opportunity to improve disclosure to help inform clients regarding soliciting dealer fees.

Finally, many Dealer Members have restrictions on paying fees to advisors that manage discretionary accounts or managed accounts which can further mitigate potential conflicts. We do note that some Dealer Members further restrict payments to advisors on non-discretionary accounts as well. We will expand upon these policies in our response to Question 7.

b. *Does the answer differ depending on the type of transaction?*

The suitability obligations do not differ depending on the type of transaction.

c. *Does the answer differ if the fee is contingent upon the securityholder voting in favour of the transaction or the transaction being approved?*

As previously mentioned, for most soliciting dealer arrangements the fee is contingent upon the "success" of the corporate action. The policies Dealer Members have address this scenario. Further, as previously stated, there are overriding obligations that manage the potential conflicts.

d. *In the context of a proxy contest, does the answer to 5 differ if the fee is contingent upon the securityholder voting in favour of management's nominees and/or management's nominees being elected?*

The IIAC Members that participated in this response agree with the regulators that this type of solicitation may be problematic, particularly from an issuer conflict of interest standpoint. There have not been many soliciting dealer arrangements in respect of contested proxy contests and therefore many Dealer Members did not have direct experiences with these arrangements. The Dealer Members participating in this response indicated that it is unlikely that they would participate in these arrangements going forward.

e. *What type of communication and disclosure by investment dealers and dealing representatives should be made to the securityholder respecting the existence of a soliciting arrangement?*

As previously mentioned, the fees that the Dealer Member and/or the advisor received are disclosed in the CRM2 Fees and Compensation Report. Dealer Members agree that additional disclosure could help clients better understand soliciting dealer arrangement fees.

6. *Do you think that there are circumstances in which it would never be appropriate for an investment dealer to enter into a soliciting dealer arrangement? If so, please discuss what such circumstances would be?*

As previously mentioned, the Dealer Members that participated in this response indicated that they are unlikely to participate in soliciting dealer arrangements for contested proxy contests as those circumstances may place the investment dealer in a conflict position vis a vis their relationship with the client and the issuer and may not be sufficiently mitigated through controls and restrictions.

7. *Are soliciting dealer fees paid to investment dealers and/or dealing representatives in connection with securities held in managed accounts? If so, in what circumstances?*

Most Dealer Members have policies restricting fees paid to advisors in connection with securities held in managed or discretionary accounts. The Dealer Member would retain the fee. As stated in our response to Question 5, the Dealer Member does not direct advisors on how to vote and therefore any potential conflict is addressed through internal policies and the suitability obligations of the advisor. In addition, some Dealer Members have hired third party advisory firms to provide independent guidance as to how their advisors should vote to further mitigate potential conflicts.

8. *How can investment dealers and dealing representatives participating in a soliciting dealer arrangement in respect of a proxy contest ensure compliance with the proxy solicitation rules?*

As previously stated, the Dealer Members that participated in this response that they are unlikely to participate in soliciting dealer arrangements for contested proxy contests.

9. *Are investment dealers and/or dealing representatives involved in proxy contests where a proxy solicitation firm has been retained?*

   As previously stated, the Dealer Members that participated in this response indicated that they are unlikely to participate in soliciting dealer arrangements for contested proxy contests. However, historically, Dealer Members that had participated in previous soliciting dealer arrangements involving proxy contests stated that a proxy solicitation firm had been retained.

10. *Do you believe that an investment dealer or dealing representative has a responsibility to encourage its client to respond to proxy solicitations, rights offerings, take-over bids or other corporate transactions such as convertible securities?*

    With respect to full service Dealer Members, the Dealer Member or advisor should only have an obligation when the terms and conditions of the event are deemed to have an impact on the suitability of the security in the client account. Dealer Members should not be expected (nor would clients want this intrusion) to be contacted for every corporate action.

    With respect to OEO Dealer Members, who cannot provide advice, they may only be expected to inform the client of a pending corporate action.

If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at **awalrath@iiac.ca** or 416-687-5472. Thank you.

Yours sincerely,

"Adrian Walrath"

Adrian Walrath
Assistant Director
Investment Industry Association of Canada

KINGSDALE Advisors

June 11, 2018

To:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
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Dear Sir/Madam:

Re: CSA Staff Notice 61-303 and Request for Comment Soliciting Dealer Arrangements

We thank you for the opportunity to provide you with comments on the use of soliciting dealer arrangements in Canada. We commend the CSA for exploring the issues related to soliciting dealer arrangements and the potential for guidance or rules to ensure the integrity of the tendering and voting process by securityholders. While the practice in the context of proxy fights in Canada has been controversial, it does not violate the law. We applaud you for considering how the practice's failure in the court of public opinion should influence the regulator's approach and weigh on the public's interest. In the past we have been critical of regulators who play the role of a police officer watching a street fight, only to intervene once a victor has been declared and the dust has settled. We hope to see that change.

Kingsdale Advisors is the proxy fight specialist in Canada having acted in more proxy contests than any other advisors combined. We have solidified our position as the most trusted advisor to management and boards because we reliably deliver the results our clients want, no matter how big the challenge. In obtaining that position, we have developed a unique understanding of the proxy voting system and pioneered new approaches to ensure our clients win. *(A select list of the public proxy fights and M&A deals we have worked on in the last 15 years is attached to this submission.)*

HISTORY OF PROXY FIGHT INNOVATION: KINGSDALE HAS BEEN A KEY PLAYER IN ALL PROXY FIGHTS WHERE SOLICITING DEALER ARRANGEMENTS HAVE BEEN USED IN CANADA

Kingsdale holds the unique position of being involved in and having advised on every instance where soliciting dealer arrangements have been used in a proxy fight in Canadian history. The shareholding system is renowned for the barriers it throws up for issuers, bidders or shareholders to contact retail objecting beneficial owner (OBO) shareholders directly. With this, comes the drive to look for new and innovative ways to penetrate this system.

It is worth noting we also advised on more M&A deals in the last 15 years than any other shareholder advisory firm or proxy solicitor. We have seen the use of soliciting dealer arrangements migrate from usage in takeover bids conducted via a tendering process to transactions conducted by way of a shareholder vote. Within the latter category, we have seen soliciting deal arrangements further move from being used in board supported and recommended transactions to ones where a board has a conflicted or entrenched position. Even within the M&A context, arrangements have gone from compensating brokers for their time to reach out to shareholders, to compensating them to help achieve a particular result.

This is important because we understand the main differentiator between the use of solicitor dealer arrangements in transactions vs. proxy fights: In the former, a recommendation to tender to an offer or vote for a plan of arrangement is made by an unconflicted sub-committee of independent directors of the board, the basis for which is grounded on a relatively empirical and objectively verifiable set of facts, specifically the price the offeror is prepared to pay compared to the intrinsic value of the company and the availability of superior strategic alternatives, including the "go it alone" alternative.

In the latter, a vote appeal is made by a conflicted set of directors who are interested in self-preservation, have access to corporate funds, and base their views on highly subjective data points such as how they think they are doing in their roles and how well they could do going forward. Equally subjective in a proxy fight scenario are the merits of the dissident's nominees and their likely contribution to, or disruption of, the board. In both cases, caught in the middle you have brokers who have been placed in a position of trust by their clients, expecting them to act in the best interest of the client, not the broker. In most cases the broker is not qualified to assess the relative merits of the company vs. a dissident slate and accompanying business plan, but certainly has an incentive to recommend one over the other when a soliciting dealer arrangement is in place.

By our count, soliciting dealer arrangements have been used in excess of 40 times in the context of M&A and three times in proxy fights.

Four of those cases –three proxy fights and a recent hostile bid– are worth expanding on given our strategic advisory role in each.

- **2012 – Octavian Partners LP vs. EnerCare Inc.** Only 12 days prior to the annual meeting, EnerCare announced it intended to pay a fee of $0.05 for each share voted by shareholders against Octavian's board nominees provided that a minimum of 1,000 shares were voted subject to a minimum fee of $100 and maximum of $1,500 per account. Octavian immediately hit back accusing EnerCare of "an extraordinary abuse of power and waste of company resources that highlights the lengths to which the current directors will go to further entrench themselves." EnerCare was majority held by retail investors –more than 75% of the shares were held by retail investors-- thus proving a worthwhile strategy to combat the considerable initial dissident support. Shareholders defeated Octavian's proposal by a vote of 19.1mm against the proposal vs 15.7mm for the proposal. Octavian, the largest shareholder, held 7.23mm shares –more than the 7.21mm shares held by the next 20 largest shareholders in aggregate.

- **2013 – JANA Partners LLC vs. Agrium Inc.** In the JANA/Agrium case both parties used boilerplate language in their proxy circulars to reserve the right to form a soliciting dealer group (a practice that has now grown common). The implementation by Agrium however was not press released and only came to light when an outraged shareholder was told by a confused broker that the shareholder would be paid for his vote. Kingsdale through its solicitation efforts worked to confirm with custodial back offices that a soliciting dealer arrangement was in place and obtained the greensheet. Agrium had agreed to pay brokers $0.25 for each share held by a Canadian voted in favour of the Agrium nominees, provided that the fee was no less than $100 (as long as they held a minimum of 30 shares) or no more than $1,500. Most importantly - no solicitation fees would be payable if the slate of Agrium nominees were not elected in full to the board. In the highly public discussion that ensued, Agrium attempted to make the case that they were simply trying to communicate with OBOs, while JANA argued that this was vote buying pure and simple. Much of the independent press, regardless of whether supportive of Agrium or JANA, found the vote buying to be inappropriate. All U.S. shareholders were surprised that soliciting dealer arrangements were and are even legal in Canada. Ultimately, Agrium saw all incumbent nominees elected, fending off JANA.

- **2017 – PointNorth Capital Inc. vs Liquor Stores N.A. Ltd.** Facing significant opposition, Liquor Stores set up a soliciting dealer group to pay brokers $0.05 for each share validly voted for each member of the Liquor Stores slate with a minimum of $100 and maximum of $1,500 to be paid per Canadian account. Fees would only be paid if each member of the Liquor Stores slate was elected to the board. Liquor Stores justified the action by indicating that this was done to try and reach the 49% of total shares held by retail OBOs who could only be contacted by their brokers. PointNorth quickly responded criticizing this as a vote buying and board entrenchment tactic given the conditions required for the payout. PointNorth also took the fight to the Alberta Security Commission (ASC) requesting that they terminate the arrangement as a matter of public interest. The ASC concluded however that there was insufficient evidence to demonstrate an abuse of the public interest as there were no clear examples of a broker offering advice that was contrary to their professional opinion and being passed along for financial benefit. The ASC was not the only influential group to weigh in on the matter; proxy advisor Glass Lewis was highly critical of the arrangement calling it "an inappropriate use of shareholder capital and a violation of basic corporate governance principles." Furthermore – multiple brokers advised they would not participate in the soliciting dealer group due to the contentious nature of the fight. In the end, the arrangement was ineffective in increasing support for Liquor Stores with six directors resigning days prior to the meeting, clearing the way for PointNorth to take control of the board.

- **2016 – Sprott Asset Management vs. Central GoldTrust (GTU) and Silver Bullion Trust (SBT).** Sprott launched a hostile tender for the silver and gold funds under the Central Fund of Canada. Both were almost exclusively comprised of long-term unknown retail OBOs. Many owned bullion funds for geo-political reasons and misunderstood the nature of their investment as one of owning actual bullion rather than actually owning units in a fund owning bullion.
    - The key economic case was that units of the trusts traded at a discount to NAV and that by tendering to Sprott that discount would be eliminated. In effect the typical tender offer premium was in fact the elimination of a discount. This message was not well understood by retail OBOs. After a drawn-out campaign that saw unitholders receive 14 mailings over 10 months, 49 press releases and with “unitholder fatigue” set in, Sprott announced a soliciting dealer arrangement that paid out to brokers whose clients tendered to the offer, and several U.S. brokerages participated for the first time.
    - Sprott paid a soliciting dealer fee of US$0.1358 per GTU unit and US$0.0448 per SBT unit deposited subject to a minimum fee of US$50.00 and a maximum fee of US$1,500.00 with respect to each beneficial unitholder of GTU or SBT and a minimum deposit of 300 GTU units or 1,000 SBT units.
    - On the final extension of the offer, Sprott included inclusion of a power of attorney to vote at a unitholders’ meeting. Ultimately Sprott secured over 50% tendered to GTU and used this to requisition and hold a unitholder meeting to replace the incumbent trustees, who then supported the subsequent plan of arrangement transaction which passed. Sprott negotiated with Central Fund that they would withdraw their offer on SBT if Central Fund did not contest the gold fund unitholders’ meeting.

GENERAL COMMENTS

In general, our view is there is nothing wrong with permitting soliciting dealer arrangements provided:

a.) shareholders are properly informed of and understand the arrangement by those a shareholder has entrusted their money to, being both the issuer and the broker-dealer; and

b.) the arrangement creates a level playing field in that solicitation is made evenly and fairly for any votes received and payment is not conditional on one side winning, thereby restoring the original basis behind broker payments – to compensate them for their time spent reaching out to securityholders.

The problem is that in each instance where soliciting dealer arrangements have been used in a proxy fight, neither has been true. Consideration should be given as to what constitutes adequately informing shareholders, including the time required to consider and digest the information. If you consider market practice for advance notice by-laws in Canada, 30 days may be appropriate.

Where one or both of these provisions are absent, the potential for abuse of shareholders, broker conflicts of interest, board entrenchment and exploitation of the integrity of the proxy voting process exists. Even in the thought experiment some have proposed, where a board would provide compensation for all votes received and not tied to outcome, brokers would still only see a greensheet from the incumbent –and therefore –conflicted board.

The bottom line: The only way to ensure the integrity of the shareholder voting system is to ban soliciting dealer arrangements within the context of proxy fights in their entirety. Shareholder outreach should be exclusively the purview of entities that are transparent in their task to contact and convince proxy voters and that lack a 'special relationship' with an investor that can be improperly exploited.

In the United States, broker-dealers have stringently avoided giving voting advice to their clients – even in the Agrium and Liquor Stores cases, U.S. broker-dealers chose not to participate. Two main reasons for this are a legal duty to act in the "best interests" of clients, a fiduciary standard, vs. to act "fairly, honestly and in good faith" in Canada, and a desire to avoid SEC filing requirements related to the proxy solicitation process.

SPECIFIC QUESTIONS

General

1. In what circumstances are soliciting dealer arrangements most typically used?

Transactions, and specifically plans of arrangement (POA), where the TargetCo needs $66^{2/3}$%, visibility is low (lots of retail OBOs), historical turnout is low and one or two negative shareholders could disproportionately impact the vote. Generally, issuers involved in POAs are equally concerned with participation and support given the two-step court process. It is much easier to get final court approval

if a majority of securityholders participated and supported the transaction. In a tender situation, similar attributes can be compounded by turnover in stock ownership as there is no record date.

2. What are the principal reasons for entering into soliciting dealer arrangements?

Expanding on the information provided in response to question 1, the appointment of the dealer manager is typically the financial advisor on file or the broker-dealer with the largest retail position. Often before a deal is announced the companies involved have had confidential discussions with larger securityholders in an effort to secure support or lock-up agreements. Failure to secure these or any perceived resistance to the deal is often a reason to drive participation higher to offset any perceived resistance. For this reason, it is common for soliciting dealer arrangements to be established some time after the deal is public and not from the outset.

3. Are soliciting dealer arrangement fees typically only paid in respect of votes "for" management's recommendations? Is that appropriate in all circumstances? Is there a reason to distinguish proxy contests in this regard?

In a POA there is only the management recommendation for the arrangement resolution. This applies to both mergers by way of POA and balance sheet or corporate restructurings by way of POA. In the latter, there is often more than one class voting but still a single management supported resolution.

The concept of paying for what management is recommending is also common in balance sheet restructuring where consent fees are now commonly paid only to those who voted for the arrangement (or indenture amendment) and not to all securityholders if the matter passes. In this case, the incentive goes directly to the securityholder and not the broker, eliminating the issue of conflict of interest.

There is a vast difference in proxy contests. In a transaction, a committee of independent directors, with advice from financial and legal advisors, comes to a recommendation for shareholders. Very often the independent opinions of the bankers (often more than one) in terms of valuation and strategic alternatives weighs heavily and the lawyers advise on fiduciary duty before a recommendation is made. It is possible for management to have a conflicted position due to change of control payments and/or new employment contracts, but the directors remain independent. In a proxy fight it is the directors' jobs on the line always (and often not the CEO). There is no possibility of being truly independent nor objective and use a dealer arrangement to shore up a result.

4. Are soliciting dealer arrangements important to the ability of issuers to contact retail OBOs?

That is their only real purpose. It is a different question if they are effective. It should be noted that while the arrangement is supposed to pay the broker for reaching out to the underlying OBO client and recommending a course of action, there is never any proof that any such outreach was undertaken. Rather, the back office of the broker simply claims all votes through their custodial position for payment. It is common that the sponsor (typically the issuer) of the arrangement has the right to inspect evidence, but the reality is there generally is no evidence kept that links the call to the vote. Dealer arrangements are particularly open to abuse by brokers with discretionary authority who do not require client instructions and can act entirely in their own interests. Discretionary accounts are common in the OBO space, particularly high net worth where voting entitlements are highest amongst retail shareholders.

Investment dealers and dealing representatives

8. How can investment dealers and dealing representatives participating in a soliciting dealer arrangement in respect of a proxy contest ensure compliance with the proxy solicitation rules?

One should first ask if they are qualified to provide advice on director elections as this is not a core competency of brokers. Neither the broker nor the back office make voting recommendations in a routine meeting nor on other governance matters. One must ask, what qualifies them to opine on director qualifications or the case for change in a contested situation?

Brokers have access to the voting control numbers for underlying clients. It would be illegal to vote a client position (without discretionary authority) without voting instructions, but almost impossible to prove if a broker either voted without instructions or overrode those instructions. For beneficially held positions there is no audit trail from individual accounts to the custodial position. It is worth asking if any compliance department could prevent a rogue broker from abusing the system.

In an investment situation, the brokers are supposed to familiarize themselves with the financial metrics and risk statements and compare them to the client's stated investment objectives and risk appetite before making any recommendation to clients. Brokers are not qualified to provide advice on contested elections and there is no 'suitability' benchmark to temper their fee based incentive.

9. Are investment dealers and/or dealing representatives involved in proxy contests where a proxy solicitation firm has been retained?

Yes . To expand on the commentary we have provided earlier on the three cases where they have been used, it is important to note the different roles broker-dealers have than a proxy solicitation firm. In addition to the fact that brokers are in a position of trust and do not necessarily disclose they are incented to secure and achieve a particular vote outcome, proxy solicitation firms openly disclose whose interests they are acting in.

10. Do you believe that an investment dealer or a dealing representative has a responsibility to encourage its client to respond to proxy solicitations (only value in POA, not generally), rights offerings (value), take-over bids (value) or other corporate transactions such as conversion of convertible securities (value)?

While we believe the responsibility exists in the case of POAs, rights offerings, take-over bids, and other corporate transactions, this is a matter for IIROC and must distinguish between encouraging *a* response vs. encouraging *a desired* response. None of these make money for brokers so they have zero interest and do not believe their fiduciary duty extends beyond investment recommendations. Rights offerings, take-over bids and conversions all have valuation issues for the holders but are voluntary events. The broker's only duty is to make clients aware. Proxy solicitations outside of transactions or restructurings are not considered value situations. The whole brokerage industry has been squeezed by online self-directed accounts (explicitly no advice given) and shrinking brokerage fees. There is more money to be made in selling packaged products than in providing any level of broker advice.

Issuers

11. Are there circumstances in which you think it would be contrary to the public interest or inconsistent with a board of directors' fiduciary duties for an issuer to

a. ***enter into a soliciting dealer arrangement?*** Where director elections or director compensation is being voted on and the broker fee is based on a desired outcome (i.e. no dissidents elected). This forces the broker into a risk position (not being paid for time) and also strains broker fiduciary duty.

b. ***retain a proxy solicitation firm?*** Never.

12. Can a board of directors comply with its fiduciary duties if it pays soliciting dealer fees for all votes, including votes that are contrary to the board's recommendation as to what is in the best interests of the corporation?

Possibly but unlikely. Brokers would still only get the board's greensheet, not an alternative one from a dissident. On the positive side such an approach would preserve the underlying principles for formation of a dealer group: 1) that there is a significant retail OBO constituency and it is important they be informed; 2) that brokers are compensated for their time and in driving participation (and not support). It would remove a glaring conflict of interest. Boards that have used soliciting dealer groups to drive support (rather than participation) make the argument that their fiduciary duty extends to sustaining the status quo and that the current strategic path is in the best interests of shareholders. This argument is possibly over-reaching their fiduciary duty particularly when it also stifles the shareholder right and ability to hear both sides of the argument. Paying for all retail OBO votes reduces but does not eliminate the conflict. Banning soliciting dealer arrangements in contested situations is the only guaranteed way to eliminate conflicts.

13. Are there particular transactions which give rise to more or less concern with respect to the use of soliciting dealer arrangements, e.g.,

a. a take-over bid tender, Low concern unless the board is not majority independent and recommending rejection.

b. a securityholder vote in relation to a merger and acquisition transaction, Low concern unless management has material interests in the result not available to securityholders. If these exist they should be included in the greensheets.

c. a securityholder vote in relation to a merger and acquisition transaction, where the fee is contingent on the securityholder voting in favour of the transaction and/or the transaction being approved, Low concern unless management has material interests in the result not available to securityholders. If these exist they should be included in the greensheets. If proper process has been followed and the opinion is unconflicted there is no issue with paying for the supportive votes.

d. a securityholder vote in the context of a proxy contest, High concern.

or

e. a proxy contest, where the fee is contingent on the securityholder voting in favour of management's nominees and/or management's nominees being elected. Highest concern.

14. What type of communication and disclosure should an issuer make to securityholders respecting the existence of a soliciting dealer arrangement?

More than the boilerplate statement including "a soliciting dealer group may be formed". Information should be publicly released in a timely fashion including the terms of the soliciting dealer arrangement (including amount paid, desired result, etc.) and such information should be provided by brokers to clients in advance of providing them with solicitation information or a request for their vote.

CONCLUDING THOUGHTS

In our view, the responsibility of engaging shareholders is one that rests with issuers, not brokers, and does not simply start when a proxy contest requires it. Ongoing engagement with all levels of shareholders in and outside of a contested situation or transaction is a sign of good corporate governance and is illustrated in a regularly high turnout of votes at shareholder meetings.

It is important to note the views of influential proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis. If the soliciting dealer fees are not conditional on favourable votes or outcome of the voting results, and are for the legitimate use of encouraging more vote participation from shareholders in uncontested meetings, proxy advisors consider such a practice generally acceptable. However, proxy advisors do not support solicitation dealer fees paid conditionally on favourable votes or outcome of the voting results, viewing such a practice as inconsistent with the basic tenets of shareholder democracy.

It is worth noting the timing of the announcement (or revelation) of the soliciting dealer arrangements in the examples cited. In the case of EnerCare, it was announced after the ISS recommendation fully in favour of management. In the cases of Agrium and Liquor Stores, ISS supported some of the dissident nominees. While we didn't know the exact date, the timing was likely after ISS' recommendation in both cases. Management will run into high risk if ISS is aware of the arrangement before issuing its recommendation.

Most, if not all, of the discussion regarding soliciting dealer arrangements has been focused on the issuers' use of the practice. Consideration should, however, be given to what would be appropriate in circumstances where an activist shareholder wishes to employ the tactic. Unlike a board who will be using the company's coffers to fund its campaign, the fact is an activist shareholder will be funding the campaign on their own. If an activist were to employ such a tactic, does this create an unfair advantage that new guidance or rules should allow a company to match? As noted, while not in the context of a proxy fight, this was done in the case of Sprott vs. Central GoldTrust and Silver Bullion Trust where there was clear evidence that inactive retail OBOs were preventing an economically sound offer from being contemplated and there was an inverse case of the dissident having potentially deeper pockets.

We thank you for the opportunity to provide you with our comments. Should you wish to discuss any of these points further or seek additional background on the practical application and implication of changes related to the use of soliciting dealer arrangements please feel free to contact Amy Freedman, CEO at 416-867-4557 or afreedman@kingsdaleadvisors.com.

Sincerely,

Wes Hall
Executive Chairman and Founder
Kingsdale Advisors

Amy Freedman
CEO
Kingsdale Advisors

INCLUDES COMMENT LETTERS

Select Proxy Fights (2003-2008)

Starting Year	Company	Dissident	Kingsdale Acted As
2003	Fording Inc.	Sherritt Coal Partnership II	Mgmt. Advisor
2003	Leitch Technology Corp.	Frederick L. Godard and Richard Kupnicki	Mgmt. Advisor
2003	Vector Aerospace Corp.	Northstar Aerospace Inc. & I.M.P. Group Ltd.	Mgmt. Advisor
2004	Dimethaid Research	Daniel H. Chicoine	Mgmt. Advisor
2004	IAMGold	Golden Star Resources Ltd.	Mgmt. Advisor
2004	Wheaton River	Coeur D'alene Mines Corporation	Mgmt. Advisor
2005	Drilcorp Energy Ltd.	Nova Bancorp Investments	Mgmt. Advisor
2005	Goldcorp	Glamis Gold Ltd.	Mgmt. Advisor
2005	Creo Inc.	Goodwood Inc. & Burton Capital Management, LLC	Dissident Advisor
2005	Environmental Management Solutions	Frank D'Addario	Dissident Advisor
2006	AnorMED Inc.	Baker Bros. Advisors, LLC	Mgmt. Advisor
2006	Bolivar Gold Corp.	Scion Capital LLC	Mgmt. Advisor
2006	Jaguar Nikel Inc.	Northern Financial Corp.	Mgmt. Advisor
2006	Mosaid Technologies Inc.	Loeb Partners Corp.	Mgmt. Advisor
2006	Sears Canada Inc.	Sears Holdings Corp.	Mgmt. Advisor
2006	Tiverton Petroleum Ltd.	C.A. Bancorp Ltd. and Strategic Energy Fund	Mgmt. Advisor
2007	Solex Resources Corp.	Mohan R. Vulimiri	Mgmt. Advisor
2007	ATS Automation Tooling Systems	Goodwood Inc. and Mason Capital Management	Mgmt. Advisor
2007	Wildcat Exploration	Yes Forex Inc. & Sol Prizant	Mgmt. Advisor
2007	True Energy	Robert Chaisson, Richard Lewanski and Gary Perron	Mgmt. Advisor
2007	Comnetix Inc.	Northern Financial Corporation	Dissident Advisor
2008	Coalcorp Mining Inc.	Pala Investments Holdings Limited	Mgmt. Advisor
2008	Genco Resources Ltd.	James R. Anderson	Mgmt. Advisor
2008	U308 Corp.	Aberdeen International Inc.	Mgmt. Advisor
2008	TLC Vision Corporation	Dr. Stephen N. Joffe	Mgmt. Advisor
2008	Noront Resources Ltd.	Rosseau Asset Management Ltd.	Dissident Advisor
2008	Loring Ward International Ltd.	Werba Reinhard Holdings Ltd.	Dissident Advisor
2008	Zarlink Semiconductor Inc.	Scott Leckie	Dissident Advisor
2008	Biovail Corp.	Eugene Melnyk	Dissident Advisor
2008	WGI Heavy Minerals, Incorporated	Passport Capital LLC	Dissident Advisor
2008	International Sovereign Energy Corp.	Eugene Hretzay and Sharad Mistry	Dissident Advisor
2008	Pet Valu, Inc.	Goodwood Inc.	Dissident Advisor
2008	Echo Energy Canada Inc.	Challenge Gas Holding AB, Exclusive Asset Management Inc. and Salvatore Fuda	Dissident Advisor
2008	First Calgary Petroleum	Waterford Finance & Investment	Dissident Advisor
2008	Tree Island Wire Income Fund	The Futura Corporation	Dissident Advisor
2008	Asian Mineral Resources	Vietnam Resource Investments Limited	Dissident Advisor

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Select Proxy Fights (2009-2011)

Starting Year	Company	Dissident	Kingsdale Acted As
2009	Hudbay Minerals Inc.	Jaguar Financial Corp.	Mgmt. Advisor
2009	Clifton Star Resources	Mineralfields Fund Management Inc.	Mgmt. Advisor
2009	Citadel Diversified Investment Trust	Brompton Administration Limited	Mgmt. Advisor
2009	Citadel Hytes Fund	Brompton Administration Limited	Mgmt. Advisor
2009	Citadel Premium Income Fund	Brompton Administration Limited	Mgmt. Advisor
2009	Citadel S-1 Income Trust Fund	Brompton Administration Limited	Mgmt. Advisor
2009	InterRent REIT	Northwest Value Partners	Mgmt. Advisor
2009	Series S-1 Income Fund	Brompton Administration Limited	Mgmt. Advisor
2009	Creston Moly Corp.	Carl Di Placido	Mgmt. Advisor
2009	TriNorth Capital Inc.	Tony P. Busseri	Mgmt. Advisor
2009	Bridgewater Systems Corp.	Crescendo Partners	Mgmt. Advisor
2009	Tiomin Resources Inc.	Jaguar Financial Corp.	Mgmt. Advisor
2009	Innvest REIT	Royal Host REIT	Mgmt. Advisor
2009	Hudbay Minerals Inc.	SRM Global Master Fund	Mgmt. Advisor
2009	Kingsway Financial Services Inc.	The Stilwell Group	Dissident Advisor
2009	Chariot Resources	Messrs. Brian Edgar and Lukas Lundin	Dissident Advisor
2009	HSE Integrated Ltd.	Forum National Investments Ltd.	Dissident Advisor
2009	Homeland Energy Group Ltd.	Lawrence Asset Management Inc.	Dissident Advisor
2009	Metallic Ventures Gold	Ward Family Investments	Dissident Advisor
2009	Polar Star Mining Corporation	T. Douglas Willock, Former President & CEO	Dissident Advisor
2009	Jaguar Financial Corporation	William Iannaci	Dissident Advisor
2009	Harte Gold Corp.	Shareholders Protection Committee of Harte Gold	Dissident Advisor
2010	Augen Capital Corp.	David Mason	Mgmt. Advisor
2010	EurOmax Resources	Anthony Patriarco	Mgmt. Advisor
2010	Gold Hawk Resources	Blue Note Mining Inc.	Mgmt. Advisor
2010	Crew Gold Corp.	Bluecone Limited	Mgmt. Advisor
2010	Staccato Gold Resources Corp	Augen Capital Corp.	Mgmt. Advisor
2010	Copper Reef	Northfield Capital and Bill Ballard	Dissident Advisor
2010	VenGrowth Funds	GrowthWorks Canadian Fund Ltd.	Dissident Advisor
2010	Augen Gold Corp.	Peter Chodos	Dissident Advisor
2010	Unique Broadband Systems	Clareste Wealth Management Inc	Dissident Advisor
2010	Sierra Geothermal Power Corp.	Exploration Partners 2005 Limited Partnership	Dissident Advisor
2011	Geomega Resources Inc.	Berthe Lambert and Richard-Marc Lacasse	Mgmt. Advisor
2011	Continental Precious Minerals	Concerned shareholder group	Mgmt. Advisor
2011	Century Mining	Concerned shareholder group	Mgmt. Advisor
2011	Global Railway	Concerned shareholder group	Mgmt. Advisor
2011	C.A. Bancorp	CDJ Global Catalyst LLC	Mgmt. Advisor
2011	Bennett Environmental	Second City Capital	Mgmt. Advisor
2011	Midlands Minerals Corporation	Bayfront Capital Partners	Mgmt. Advisor
2011	URSA Major	Inspiration Mining, Forbes & Manhattan and Vic Alboini	Mgmt. Advisor
2011	URSA Major	Inspiration Mining Corp.	Mgmt. Advisor
2011	Unique Broadband Systems	Alex Dolgonos	Mgmt. Advisor
2011	Viterra Inc.	AIMCo	Mgmt. Advisor
2011	Arctic Glacier	Coliseum Capital Partners	Dissident Advisor
2011	Augyva Mining Resources	RCM Partners	Dissident Advisor
2011	Klondex Mines Ltd.	K2 Principal Fund LP	Dissident Advisor
2011	Maple Leaf Foods	West Face Capital Inc.	Dissident Advisor
2011	RX Exploration Inc.	Concerned shareholder group	Dissident Advisor
2011	TMX Group Inc.	Maple Group Acquisition Corp	Dissident Advisor
2011	WebTech Wireless	Goodwood Inc.	Dissident Advisor
2011	Zenn Motor Company	Ian Clifford	Dissident Advisor

INCLUDES COMMENT LETTERS

Select Proxy Fights (2012-2013)

Starting Year	Company	Dissident	Kingsdale Acted As
2012	Continental Precious Minerals Inc.	Sharad Mistry	Mgmt. Advisor
2012	Dacha Strategic Metals Inc.	Goodwood Funds	Mgmt. Advisor
2012	MAG Silver	Mining Investors for Shareholder Value	Mgmt. Advisor
2012	Forbes & Manhattan Coal	RCF, Terrafirma, Skye Alba	Mgmt. Advisor
2012	Longford Energy	Goodwood Inc.	Mgmt. Advisor
2012	Mundoro Capital Inc.	Northern Minerals Investment	Mgmt. Advisor
2012	International Datacasting Corp.	Adam Adamou	Mgmt. Advisor
2012	Maudore Minerals	Rex Harbour	Mgmt. Advisor
2012	Jaguar Mining	Bristol Investment Group	Mgmt. Advisor
2012	Alberta Oil Sands	Chad Dust	Mgmt. Advisor
2012	Avion Gold	Sentry Select, Sprott	Mgmt. Advisor
2012	Cvtech Group (Now NAPEC Inc.)	Guy Aubert	Mgmt. Advisor
2012	Enercare Inc.	Octavian Advisors	Mgmt. Advisor
2012	Quadra FNX	West Face	Mgmt. Advisor
2012	Helix BioPharma Corporation	ACM Alpha Consulting Management	Mgmt. Advisor
2012	Baja Mining	Mount Kellett	Dissident Advisor
2012	Canadian Pacific Railway	Pershing Square Holdings Ltd.	Dissident Advisor
2012	Fancamp Exploration	Robert Granger	Dissident Advisor
2012	International PBX	Terry Lynch	Dissident Advisor
2012	Miranda Technologies	JEC Capital Partners	Dissident Advisor
2012	Roxgold Inc.	Oliver Lennox-King	Dissident Advisor
2012	Telus	Mason Capital Management LLC	Dissident Advisor
2012	Western Wind	Savitr Capital LLC	Dissident Advisor
2013	Wesdome Gold Mines Ltd.	Resolute Funds Ltd	Mgmt. Advisor
2013	Ithaca Energy Inc	JEC Capital Partners	Mgmt. Advisor
2013	Teranga Gold Corp	Mineral Deposits Ltd.	Mgmt. Advisor
2013	Formation Metals	Dundee Corp	Mgmt. Advisor
2013	Partners REIT	IGW Public LP	Mgmt. Advisor
2013	Barkerville Gold Mines	Rex Harbour	Mgmt. Advisor
2013	RONA Inc.	Invesco Canada	Mgmt. Advisor
2013	Intrepid Mines Ltd	Quantum Pacific Investment Ltd & Ffides Capital Partners Ltd	Mgmt. Advisor
2013	Pace Oil & Gas	Nova Bancorp Securities Ltd.	Mgmt. Advisor
2013	Agrium Inc.	Jana Partners LLC	Dissident Advisor
2013	Epsilon Energy Ltd	JVL Advisors, LLC and Advisory Research, Inc	Dissident Advisor
2013	Gale Force Petroleum	Iroquois Capital	Dissident Advisor
2013	Genesis Land Development	Smoothwater Capital Corp.	Dissident Advisor
2013	Longreach Oil and Gas Ltd	Cam Deacon and Dennis Sharp	Dissident Advisor
2013	Oremex Silver Inc.	Sprott Asset Management LP, Concept Capital Management	Dissident Advisor
2013	Pan American Goldfields Ltd	Vortex Capital Corp	Dissident Advisor

INCLUDES COMMENT LETTERS

Select Proxy Fights (2014-2015)

Starting Year	Company	Dissident	Kingsdale Acted As
2014	Clifton Star Resources	Harry Miller	Mgmt. Advisor
2014	Bellatrix Exploration Ltd.	Orange Capital, LLC	Mgmt. Advisor
2014	Atlantic Power Corporation	Clinton Group Inc.	Mgmt. Advisor
2014	Tuckamore Capital Management Inc.	Concerned shareholder group	Mgmt. Advisor
2014	Equal Energy Ltd.	Montclair Energy, LLC	Mgmt. Advisor
2014	Banro Corporation	Liberty Street Capital Corp.	Mgmt. Advisor
2014	Scorpio Mining Corporation	Tocqueville Asset Management	Mgmt. Advisor
2014	Sherritt International Corp.	George Armoyan; Clarke Inc.	Mgmt. Advisor
2014	Renegade Petroleum Ltd.	FrontFour Capital Group LLC	Mgmt. Advisor
2014	Augusta Resource Corp.	Hudbay Minerals Inc.	Dissident Advisor
2014	BENEV Capital	Difference Capital	Dissident Advisor
2014	Chaparral Gold Corp.	Goldrock and Waterton Global	Dissident Advisor
2014	Equity Financial Holdings Inc.	Smoothwater Capital Corp.	Dissident Advisor
2014	Innvest REIT	Orange Capital, LLC	Dissident Advisor
2014	Neptune Technologies & BioResources Inc.	George Haywood, Messrs. Egan, O'Driscoll and Dobrich	Dissident Advisor
2014	NewAlta	Orange Capital, LLC	Dissident Advisor
2014	Partners Real Estate Investment Trust	Orange Capital, LLC	Dissident Advisor
2014	Suroco Energy Inc.	VETRA Holding S.a.r.l.	Dissident Advisor
2014	Timmins Gold Corp.	Sentry Investments Inc.	Dissident Advisor
2014	Hanfeng Evergreen Inc.	Xinduo Yu	Dissident Advisor
2015	Fission Uranium Corp.	FCU OverSight	Mgmt. Advisor
2015	Gran Colombia Gold Corp.	Lloyd I. Miller III	Mgmt. Advisor
2015	Gran Colombia Gold Corp.	MMCAP International Inc.	Mgmt. Advisor
2015	STT Enviro Corp.	Robert Genovese and BG Capital Group	Mgmt. Advisor
2015	Atlantic Power Corp.	Mangrove Partners	Mgmt. Advisor
2015	Legacy Oil + Gas Inc.	FrontFour Capital Group LLC	Mgmt. Advisor
2015	Pacific Rubiales Energy Corp.	O'Hara Administration Co., S.A.	Mgmt. Advisor
2015	Clifton Star Resources Inc.	Harry Miller	Mgmt. Advisor
2015	Aberdeen International	Meson Capital and Nightscape Capital	Mgmt. Advisor
2015	Extendicare Inc.	Oxford Park Group	Dissident Advisor
2015	Dominion Diamond Corp.	K2 & Associates Investment Management	Dissident Advisor
2015	Rock Energy Inc.	FrontFour Capital Group LLC	Dissident Advisor
2015	Performance Sports Group	W. Graeme Roustan Trust	Dissident Advisor
2015	Kobex Capital Corp.	Kingsway Financial Services	Dissident Advisor
2015	Gran Tierra Energy Inc.	West Face Capital	Dissident Advisor
2015	Temex Resources Corp.	Lake Shore Gold Corp.	Dissident Advisor
2015	CB Gold Inc.	Batero Gold Corp.	Dissident Advisor
2015	Temple Hotels Inc.	Centennial Group Ltd.	Dissident Advisor

INCLUDES COMMENT LETTERS

Select Proxy Fights (2016-2018)

Starting Year	Company	Dissident	Kingsdale Acted As
2016	Kirkland Lake Gold	Gold Fields Netherlands Services B.V. and Silver Standard Resources Inc.	Mgmt. Advisor
2016	Hemostemix Inc.	Concerned shareholder group	Mgmt. Advisor
2016	Wesdome Gold Mines Ltd.	Resolute Funds Ltd.	Mgmt. Advisor
2016	Data Group Ltd.	KST Industries Inc. and Mr. Takhar	Mgmt. Advisor
2016	SunOpta Inc.	Tourbillon Capital Partners/West Face Capital Inc.	Mgmt. Advisor
2016	Alberta OilSands Inc.	Smoothwater Capital Corp.	Dissident Advisor
2016	Taseko Mines Limited	Raging River and RC LLC	Dissident Advisor
2016	Trez Capital Mortgage Investment Corp.	FrontFour and Windsor Capital	Dissident Advisor
2016	Corus Entertainment Inc.	The Catalyst Capital Group Inc.	Dissident Advisor
2017	Imvescor Restaurant Group Inc.	ADW Capital Partners LP	Mgmt. Advisor
2017	Obsidian Energy Ltd.	FrontFour Capital Group LLC	Mgmt. Advisor
2017	CanniMed Therapeutics Inc.	Aurora Cannabis Inc.	Mgmt. Advisor
2017	Rapier Gold Inc.	Delbrook Capital Advisors Inc.	Mgmt. Advisor
2017	Synex International Inc.	Daniel Russelll	Dissident Advisor
2017	Agellan Commercial REIT	Sandpiper Group	Dissident Advisor
2017	Tembec	Oaktree Capital Management	Dissident Advisor
2017	Granite REIT	FrontFour Capital Group LLC and Sandpiper Group	Dissident Advisor
2017	Espial Group Inc.	Vantage Asset Management Inc.	Dissident Advisor
2017	Eco Oro Minerals Corp.	Courtenay Wolfe and Harrington Global Opportunites Fund Ltd.	Dissident Advisor
2017	Liquor Stores N.A. Ltd.	PointNorth Capital Inc.	Dissident Advisor
2018	DIRTT Environmental Solutions Ltd.	Iron Compass LLC	Mgmt. Advisor
2018	Global Atomic Corp.	Grayling Investments and Bunker Hunt Trust	Mgmt. Advisor
2018	Colorado Resources Ltd.	Adam Travis	Mgmt. Advisor
2018	Crescent Point Energy Corp.	Cation Capital Inc.	Mgmt. Advisor
2018	Aimia Inc.	Mittleman Brothers Investement Management	Mgmt. Advisor
2018	Artis REIT	Sandpiper Group	Mgmt. Advisor
2018	Alexandria Minerals Corp.	Eric Owens	Mgmt. Advisor
2018	Glance Technologies Inc.	Penny Green	Dissident Advisor

INCLUDES COMMENT LETTERS

Select Mergers and Acquisitions (2005-2008)

Year	Target	Acquirer	Transaction
2005	Starpoint	Acclaim	POA
2005	People's Communications Inc	Amtelecom Income Fund	POA
2005	Virginia Gold Mines	Goldcorp Inc.	POA
2005	PetroKazakhstan	China National Petroleum Corp	POA
2005	Tempest Energy Corp	Daylight Energy Trust	POA
2005	International Taurus Resources	American Bonanza Gold Mining	POA
2006	NAV Energy Trust	Clear Energy Inc	POA
2006	Desert Sun Mining	Yamana Gold Inc	POA
2006	Trizen Canada Inc	Brookfield Partners	POA
2006	Prairie Schooner Petroleum Ltd	True Energy Trust	POA
2006	Advantage Energy Income Fund	Ketch Resources Trust	POA
2006	Centurion Energy International Inc	Dana Gas	Friendly Takeover Bid
2007	Arriscraft International	General Shale Brick Inc.	POA
2007	Fairbourne Energy Trust	Denham Commodity Partners	POA
2007	Magnus Energy Inc	Questerre Energy Corp	POA
2007	Mission Oil & Gas Inc	Crescent Point Energy	POA
2007	Axcan Pharma Inc	TPG Capital	POA
2007	Canetic	Penn West Energy Trust	POA
2007	Northern Orion Resources	Yamana Gold	POA
2007	TIR Systems Ltd	Phillips SSL	POA
2007	Energy Metals Corp	Uranium One	POA
2007	CCS Income Trust	CEO-led private buyout	POA
2007	Bowater	Atibibi	POA
2008	Gold Eagle Mines Ltd.	Goldcorp Inc.	POA
2008	Athlone Energy	Daylight Resources Trust	POA
2008	CHC Helicopter Corporation	First Reserve Corporation	POA
2008	Commercial & Industrial Securities Income Trust	Sentry Select Income Fund	POA
2008	Quinto Mining	Consolidated Thompson Iron Mines	POA
2008	Peak Gold Ltd and Metallica Resources Inc	New Gold Inc.	POA
2008	Pacific Stratus Energy Ltd	Petro Rubiales Energy Corp	POA
2008	UrAsia Energy	Uranium One	POA
2008	Bourse de Montreal Inc	TSX Group Inc	POA
2008	Skye Resources Inc	Hudbay Minerals Inc	POA
2008	Anglo Potash Ltd	BHP Billiton Diamonds Inc	POA

INCLUDES COMMENT LETTERS

Select Mergers and Acquisitions (2009-2011)

Year	Target	Acquirer	Transaction
2009	Silverstone Resources Corp	Silver Wheaton Corp	POA
2009	Chalk Media	Resreach In Motion	POA
2009	Certicom Corp	Resreach In Motion	POA
2009	Ontex Resources Ltd	Roxmark Mines Ltd	POA
2009	PDX Resources	Detour Gold	POA
2009	Petro-Canada	Suncor Energy	POA
2009	Columbia Goldfields	Medoro Resources Ltd	POA
2009	Canplats Resources Corp	Goldcorp Inc.	POA
2009	IAT Cargo Facilities	Huntingdon REIT	POA
2009	Western Goldfields Inc	New Gold Inc.	POA
2009	Dynamite Resources	Avion Gold	POA
2009	Masters Energy Inc	Zargon Energy Trust	POA
2009	Hillsborough Resources Ltd	Vitol Anker International	POA
2009	Garson Gold Corporation	Alexis Minerals Corporation	POA
2010	BakBone Software	Quest Software	POA
2010	Franconia Metals Corp	Duluth Metals Ltd	POA
2010	Terrane Metals Company	Thompson Creek Metals Co	POA
2010	Red Back Mining Inc	Kinross Gold Corporation	POA
2010	Proginet Corporation	TIBCO Software Inc	POA
2010	VG Gold	Lexam Explorations	POA
2010	Marathon PGM Corp	Stillwater Mining Company	POA
2010	Vaaldiam Resources Ltd	Tiomin Resources Inc	POA
2010	Forbes Medi-Tech	Pharmchem Labratories	POA
2010	FNX Mining Ltd	Quadra Mining Ltd	POA
2010	Estrucan Resources Inc	Endeavour Mining	POA
2010	Athabasca Potash	BHP Billiton Diamonds Inc	POA
2011	Inca Pacfic Resources Inc	Compania Minera Milpo	POA
2011	Pediment Gold Inc	Argonaut Gold Inc.	Friendly Takeover Bid
2011	Goldstone Resources Inc	Premier Gold Mines Ltd	POA
2011	Primero Mining Corp	Northgate Minerals Corporation	POA
2011	Northgate Minerals Corporation	AuRico Gold	POA
2011	Tonbridge Power Inc	Enbridge Inc	POA
2011	Trade Wind Ventures	Detour Gold	POA
2011	Primera Group	Touchstone Exploration Inc	POA
2011	Richfield Ventures Corp	New Gold Inc.	POA
2011	Petro Andina Resources Inc	Pluspestrol Resources Corp	POA
2011	Iberian Resources Corp	Petaquilla Minerals Ltd	POA
2011	Auryx Gold	B2Gold	POA
2011	Gold Wheaton Gold Corp	Franco-Nevada Corp	POA
2011	Bridgewater Systems	Amdocs Ltd.	POA
2011	ECU Silver Mining Inc.	Golden Minerals Company	POA

INCLUDES COMMENT LETTERS

Select Mergers and Acquisitions (2012-2013)

Year	Target	Acquirer	Transaction
2012	US Gold Corp	Minera Andes Inc	POA
2012	Ruggedcom Inc	Belden Inc.	Hostile Takeover Bid
2012	Carnmarc REIT	Cominar REIT	POA
2012	Anvil Mining Limited	Mmg Malachite Limited	Friendly Takeover Bid
2012	NorRock Realty Finance Corporation	Partners REIT	POA
2012	Quadra Fnx Mining Ltd.	KGHM Polska Miedz S.A.	POA
2012	Minefinders Corporation Ltd.	Pan American Silver Corp.	POA
2012	Gold-Ore Resources Ltd.	Elgin Mining	POA
2012	Viterra Inc.	Glencore	POA
2012	European Goldfields Ltd	Eldorado Gold Corporation	POA
2012	Neo Material Technologies Inc.	MCP Exchangeco Inc-Molycorp Inc	POA
2012	First Uranium Corporation	Algold	POA
2012	The Westaim Corporation	Intact Financial Corporation	POA
2012	Royal Host Inc.	Holloway Lodging Corp	Friendly Takeover Bid
2012	Petromagdalena Energy Corp.	Pacific Rubiales	POA
2012	Aberdeen International	Dacha Strategic Metals Inc.	POA
2012	Canpages	Yellow Media Inc.	POA
2012	Avion Gold Corporation	Endeavour Mining	POA
2012	Prodigy Inc.	Argonaut Gold Inc.	POA
2012	Calvista Gold Corporation	AUX Canada	POA
2012	Shona Energy Company, Inc.	Canacol Energy Ltd.	POA
2012	Galway Resources Ltd.	AUX Canada	POA
2012	Queenston Mining Inc.	Osisko Mining Corporation	POA
2012	C&C Energia Ltd.	Pacific Rubiales	POA
2013	Primaris Retail Real Estate Investment Trust	Kingsett Capital	Friendly Takeover Bid
2013	Peer 1 Network Enterprises, Inc.	Cogeco Cable	Friendly Takeover Bid
2013	Ym Biosciences Inc.	Gilead Sciences	POA
2013	AvenEx Energy Corp. and Charger Energy Corp.	Pace Oil & Gas Ltd.	POA
2013	Uranium One Inc.	JSC Atomredmetzoloto	POA
2013	Flexpipe Systems Inc.	Shawcor Ltd.	POA
2013	Sasamat Capital Corporation	KHD Humboldt Wedag International Ltd.	POA
2013	Primaris Retail Real Estate Investment Trust	H&R REIT	POA
2013	Minefinders Corporation Ltd.	Pan American Silver Corp.	POA
2013	Orko Silver Corp	Coeur d'Alene Mines Corporation	POA
2013	Enns Agri and Mayor Equipment	Rocky Mountain Dealerships Inc.	Friendly Takeover Bid
2013	Rainy River Resources Ltd.	New Gold Inc.	Friendly Takeover Bid
2013	Oromin Explorations Ltd.	Teranga Gold Corporation	Friendly Takeover Bid
2013	CML Healthcare	LifeLabs	POA
2013	Petrominerales Ltd.	Pacific Rubiales Energy Corp	POA
2013	Alpha Minerals Inc.	Fission Uranium Corp.	POA

INCLUDES COMMENT LETTERS

Select Mergers and Acquisitions (2014-2015)

Year	Target	Acquirer	Transaction
2014	RB Energy	Sirocco and Canadian Lithium	POA
2014	Brigus Gold	Primero Mining Corp	POA
2014	Touchstone Exploration Inc	Petrobank Energy	POA
2014	Tuckamore Capital Management Inc.	Birch Hill Equity Partners	POA
2014	Rio Alto Mining	Tahoe Resources	POA
2014	Equal Energy Ltd.	Petroflow Energy	POA
2014	Sulliden Gold Corp .	Rio Alto Mining Ltd.	POA
2014	Christ Water Technologies	GLV	POA
2014	VIM 5 and VIM 19 E&P Contracts and Clarinete Gas Discovery	Canacol Energy Ltd.	POA
2014	Bayfield Ventures Corp.	New Gold Inc.	POA
2015	Central GoldTrust	Sprott Asset Management LP	Hostile Takeover Bid
2015	Silver Bullion Trust	Sprott Asset Management LP	Hostile Takeover Bid
2015	Century Fire Protection	First Service Corporation	POA
2015	AuRico Gold	Alamos Gold Inc	POA
2015	NorthWest International Healthcare Properties REIT	Northwest Healthcare Properties REIT	POA
2015	SecTrack NV	BSM Technologies Inc.	POA
2015	Romarco Minerals Inc.	OceanaGold Corp	POA
2015	True North Apartment REIT	Northern Property REIT	POA
2015	Fission Uranium Corp.	CGN Mining Company Limited	POA
2015	Canadian Oil Sands Ltd.	Suncor Energy	Hostile Takeover Bid
2015	Talisman Energy Inc.	Repsol	POA
2015	Probe Mines Ltd.	Goldcorp Inc.	POA
2015	Colliers	FirstService Corp	POA
2015	Allana Potash Corp.	Israel Chemical Ltd.	POA
2015	Webtech Wireless	BSM Technologies Inc.	POA

INCLUDES COMMENT LETTERS

Select Mergers and Acquisitions (2016-2018)

Year	Target	Acquirer	Transaction
2016	Newmarket Gold Inc.	Kirkland Lake Gold Inc.	POA
2016	Rona Inc.	Lowe's Companies Inc.	POA
2016	Boulder Energy Ltd.	ARC Financial Corp.	POA
2016	Progressive Waste Solutions Ltd.	Waste Connections Inc.	POA
2016	Kaminak Gold Corporation	Goldcorp Inc.	POA
2016	Ovivo Inc.	SKion Water International	POA
2016	GE Capital	Element Financial Corporation	POA
2016	Jackpotjoy PLC	The Intertain Group Limited	POA
2016	Thompson Creek Metals Company Inc.	Centerra Gold Inc.	POA
2016	Potash Corporation of Saskatchewan	Agrium, Inc.	POA
2016	Novo Resources Corp.	Kirkland Lake Gold Inc	POA
2016	Wafergen Biosystems	Takara Bio Inc.	POA
2016	Spectra Energy	Enbridge, Inc.	POA
2017	Spur Resources Ltd	Tamarack Valley Energy	POA
2017	Canexus Corp.	Chemtrade	Hostile Takeover Bid
2017	Adriana Resources Inc.	Sprott Resources Corp	POA
2017	Milestone Apartments REIT	Starwood Capital Group	Friendly Takeover Bid
2017	Orex Exploration Inc.	Anaconda Mining Inc.	POA
2017	Exeter Resource Corporation	Goldcorp Inc.	Friendly Takeover Bid
2017	Integra Gold Corp	Eldorado Gold Corporation	POA
2017	Veresen Inc.	Pembina Pipeline Corporation	POA
2017	Sandvine Corporation	Vector Capital Management LP	POA
2017	Innova Gaming Group Inc.	Pollard Banknote	Friendly Takeover Bid
2017	Canexus Corporation	Chemtrade Logistics Income Fund	POA
2017	Aecon Group	CCCC International Holding Limited	POA
2017	Dominion Diamond Corporation	The Washington Companies	POA
2018	Napec Inc.	Oaktree	POA
2018	Imvescor Restaurant Group Inc.	MTY Food Group Inc.	POA
2018	Automodular Corporation	HLS Therapeutics Inc.	POA
2018	Newalta Corporation	Tervita Corporation	POA
2018	Maritime Resources Corp.	Anaconda Mining Inc.	Hostile Takeover Bid
2018	Rye Patch Gold Corp.	Alio Gold Inc	POA
2018	Iron Bridge Resources Inc.	Velvet Energy Ltd.	Hostile Takeover Bid

INCLUDES COMMENT LETTERS

PSP Investments

BY EMAIL

June 18, 2018

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

C/O:

Me Anne-Marie Beaudoin
Corporate Secretary
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The Secretary
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22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Mr. Christopher Peng
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
E-mail: christopher.peng@asc.ca

Dear Sir/Madam:

RE: CSA Staff Notice 61-303 and Request for Comment *Soliciting Dealer Arrangements* (the "Request for Comment")

This submission is made by the Public Sector Pension Investment Board ("PSP Investments") in response to the Request for Comment released on April 12, 2018.

Background

By way of background, PSP Investments is one of Canada's largest pension investment managers, with $153.0 billion of net assets as of March 31, 2018. We are a Canadian Crown corporation that invests funds for the pension plans of the federal public service, the Canadian Forces, the Royal Canadian Mounted Police and the Reserve Force. Our head office is located in Ottawa and our highly-skilled and diverse team of more than 800 professionals works from offices in Montréal, New York and London. PSP Investments' mandate is to manage the pension funds transferred to it by the Government of Canada in

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PSP Investments

the best interests of contributors and beneficiaries, and to maximize investment returns without undue risk of loss.

To that end, we manage a diversified global portfolio composed of investments in public financial markets, private equity, real estate, infrastructure, natural resources and private debt.

General Comments

We understand that soliciting dealer arrangements may be utilized in a variety of contexts to entice shareholders to cast their votes for a shareholders' meeting, tender their securities to a take-over bid or participate in a rights offering. While the Request for Comment is seeking views on the broad spectrum of issues related to soliciting dealer arrangements, we will provide our observations on the narrower issue of the payment of fees contingent on supporting a specific recommendation in the context of a shareholder vote ("One-sided Arrangements").

As a long-term institutional investor in the global equity markets, we strive to vote at all shareholder meetings organized by companies in which we invest. However, we understand that issuers must often contend with low participation rates of retail shareholders in the context of shareholders' meetings. National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* also makes it challenging for issuers to communicate with objecting beneficial owners to prompt them to exercise their voting rights. To that end, soliciting dealer arrangements constitutes an important means in capital markets, allowing issuers to meet quorum requirements and ensuring the legitimacy of shareholders' meetings.

Accordingly, we find soliciting dealer arrangements utilized for the purpose of fostering shareholder participation and enhancing shareholder democracy appropriate, provided that they are not conditional on a particular voting result and are not structured in a way that is intended to influence the vote. Paying dealers to solicit shareholders' votes is of benefit to issuers and shareholders, as well as capital markets as a whole.

However, we are very concerned with One-sided Arrangements as they result in payments that are contingent upon the support of a specific recommendation. This practice is objectionable as it is likely inconsistent with directors' fiduciary duties since it may result in board entrenchment using company resources. One-sided Arrangements may also create a conflict of interest between the dealer and his client as dealers have an obligation to work in the clients' interests but are also being paid by issuers to entice clients to vote for a specific recommendation. In our view, One-sided Arrangements constitute a form of "vote buying" and are detrimental to the quality of capital markets because they adversely impact the shareholders' ability to express their votes without undue or biased influence.

We believe One-sided Arrangements in the context of shareholders' meetings should be prohibited in all instances, including in cases of proxy contests. In such instances, while One-sided Arrangements may lessen potential conflicts of interests between the dealers and their clients if offered by each proponent, the concerns in respect to incumbent boards' fiduciary duties and the improper use of company resources remain.

PSP Investments

In summary, we believe that soliciting dealer arrangements can play an important role in capital markets by fostering shareholder democracy, provided that the payments are not contingent to a specific recommendation.

Thank you again for providing the opportunity to share our views on this important issue.

Should you require any additional information in respect to this comment letter, please feel free to contact the undersigned.

Best regards,

[redacted]

Stéphanie Lachance

Vice President, Responsible Investment

SHARE
SHAREHOLDER ASSOCIATION for RESEARCH & EDUCATION

June 18, 2018

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

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consultation-en-cours@lautorite.qc.ca

Dear Madam/Sir:

Re: CSA Staff Notice 61-303 and Request for Comment
Soliciting Dealer Arrangements

Thank you for the opportunity to comment on CSA Staff Notice 61-303 and Request for Comment *Soliciting Dealer Arrangements* ("Request for Comment") released April 12, 2018.

The Shareholder Association for Research and Education (SHARE) is a Canadian leader in responsible investment services, research and education for institutional investors. Since its creation in 2000, SHARE has carried out this mandate by providing active ownership services, including proxy voting and engagement, education, policy advocacy, and practical research on issues related to responsible investment and the promotion of a sustainable, inclusive and productive economy. Our clients include pension funds, mutual funds, foundations, endowments, faith-based organizations and asset managers across Canada with more than $22.5 billion in assets under management.

We would like to offer the following comments and recommendations regarding the April 12th Staff Notice.

The Staff Notice asks whether soliciting dealer arrangements are important to the ability of issuers to contact retail objecting beneficial owners (OBOs).

We recognize that reaching shareholders to allow full participation in a given shareholder vote, and in particular to ensure quorum is reached, is important. If soliciting dealer arrangements are structured such that the sole purpose and result of the arrangement is to allow the shareholder to exercise their franchise – and not to influence the individual vote or tender – the use of these arrangements may not give rise to public interest concerns or "vote buying."

We do not, therefore, object to soliciting dealer arrangements where the sole purpose is encouraging shareholders to exercise their franchise and the arrangements are not structured in a way that is intended to or likely to influence the vote or tender. In order to meet this criteria, the arrangement may not include any contingency – either through fees or otherwise – related to individual voter behaviour or vote outcomes.

The Staff Notice asks whether this conflict of interest may be managed or avoided. In our view the best means of avoiding the conflict is a red-line prohibition on arrangements that are contingent on the outcome of the individual vote or the overall decision.

If you have any questions or would like to discuss these comments further, please feel free to contact me at any time. I can be reached at 416-306-6453 or by email at kthomas@share.ca.

Sincerely,

Kevin Thomas
Executive Director
Shareholder Association for Research & Education