

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

Notice of National Policy

The Commission has adopted National Policy 62-202 Take-Over Bids - Defensive Tactics and rescinded National Policy Statement No. 38 Take-Over Bids - Defensive Tactics.

National Policy 62-202 comes into force and National Policy Statement No. 38 is rescinded on August 4, 1997.

Substance and Purpose of National Policy

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

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

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

Summary of National Policy

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

Summary of Written Comments Received by the Commission

One comment letter was received on the proposed National Policy.

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

1. unrestricted auctions produce the most desirable results; and

2. securities administrators will take appropriate action when they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid.

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

Response of the CSA

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

National Policy

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

Text of Rescission of National Policy Statement No. 38

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

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

DATED: July 4, 1997.

NATIONAL POLICY 62-202 TAKE-OVER BIDS - DEFENSIVE TACTICS

PART 1 DEFENSIVE TACTICS

1.1 Defensive Tactics

(1) The Canadian securities regulatory authorities recognize that take-over bids play an important role in the economy by acting as a discipline on corporate management and as a means of reallocating economic resources to their best uses. In considering the merits of a take-over bid, there is a possibility that the interests of management of the target company will differ from those of its shareholders. Management of a target company may take one or more of the following actions in response to a bid that it opposes:

1. Attempt to persuade shareholders to reject the bid.
2. Take action to maximize the return to shareholders including soliciting a higher bid from a third party.
3. Take other defensive measures to defeat the bid.

(2) The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are concerned that certain defensive measures taken by management of a target company may have the effect of denying to shareholders the ability to make such a decision and of frustrating an open take-over bid process.

(3) The Canadian securities regulatory authorities have determined that it is inappropriate to specify a code of conduct for directors of a target company, in addition to the fiduciary standard required by corporate law. Any fixed code of conduct runs the risk of containing provisions that might be insufficient in some cases and excessive in others. However, the Canadian securities regulatory authorities wish to advise participants in the capital markets that they are prepared to examine target company tactics in specific cases to determine whether they are abusive of shareholder rights. Prior shareholder approval of corporate action would, in appropriate cases, allay such concerns.

(4) Without limiting the foregoing, defensive tactics that may come under scrutiny if undertaken during the course of a bid, or immediately before a bid, if the board of directors has reason to believe that a bid might be imminent, include

(a) the issuance, or the granting of an option on, or the purchase of, securities representing a significant percentage of the outstanding securities of the target company,

(b) the sale or acquisition, or granting of an option on, or agreeing to sell or acquire, assets of a material amount, and

(c) entering into a contract other than in the normal course of business or taking corporate action other than in the normal course of business.

(5) The Canadian securities regulatory authorities consider that unrestricted auctions produce the most desirable results in take-over bids and they are reluctant to intervene in contested bids. However, they will take appropriate action if they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid or to a competing bid.

(6) The Canadian securities regulatory authorities appreciate that defensive tactics, including those that may consist of some of the actions listed in subsection (4), may be taken by a board of directors of a target company in a genuine attempt to obtain a better bid. Tactics that are likely to deny or limit severely the ability of the shareholders to respond to a take-over bid or a competing bid may result in action by the Canadian securities regulatory authorities.

(7) As a general rule, the Canadian securities regulatory authorities will not advise parties as to the propriety of proposed action in a particular case except in the context of a meeting or proceeding of which interested parties have been given notice.

PART 2 EFFECTIVE DATE

2.1 Effective Date - This National Policy comes into force on August 4, 1997.