IIACACCVM
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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