

SASKATCHEWAN WEIGHS BIG OFFER

Canada's largest fertilizer maker, Potash Corp. of Saskatchewan Inc., and its hostile suitor BHP Billiton Ltd. are on a collision course headed straight toward the **Saskatchewan Financial Services Commission (SFSC)**. BHP's nearly US\$40-billion takeover proposal -- the biggest anywhere in the world this year -- could be decided by the SFSC that oversees the two publicly traded companies. The SFSC knows about the shareholder rights plan (known as a poison pill) unveiled by Potash Corp. last week in the wake of BHP's "grossly inadequate" offer. However, unlike most of its provincial counterparts, it has never had to issue a decision on a shareholders rights plan.

"It will be something new for this commission," explains **Barbara Shourounis, director of securities at the Saskatchewan regulator**. In fact, "we don't have a view about shareholder rights plans," she adds. Instead, the commission refers to national policy instrument 62-202 dealing with takeover bids and other defensive tactics, outlined by the Canadian Securities Administrators, the umbrella group made up of 13 provincial and territorial securities regulators. NP62-202 warns that regulators will take a dim view of companies that adopt defensive measures that will likely result in shareholders being deprived of the opportunity to respond to a takeover bid.

Although the broadly worded policy came into effect before the first poison pill was adopted in Canada in 1991, its application has been consistent across the country. Provincial securities commissions have tended to be more bidder-friendly in their approach to regulating shareholder rights plans and have almost always struck them down. In Saskatchewan, Ms. Shourounis says that the national policy has been adopted and is law in the province. "If our commission is required to look at the shareholders rights plan later on, they will be deciding the issue in the context of the decisions that have already been made," she explains. ...

The **Alberta Securities Commission** ruled in favour of a shareholder rights plan by Pulse Data Inc., followed by a similar decision in 2009 involving Canadian Hydro Developers Inc.

Last year, the **Ontario Securities Commission**, Canada's largest securities watchdog, ruled similarly in the case involving Neo Material Technologies.

British Columbia also adhered to precedents. In a decision in April, 2010, the regulator rejected a poison pill adopted by Lions Gate Entertainment Corp. in an attempt to thwart a hostile takeover by entities controlled by Carl Icahn. Lions Gate shareholders were set to vote on the poison pill two days after Icahn's takeover bid was set to expire.

The SFSC will have to choose between the two conflicting interpretations of the policy. The decisions in British Columbia, Alberta and Ontario indicate that the success of a poison pill may ultimately depend on the jurisdiction where the hearing is being held.

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