

The Ontario Securities Commission

AMENDMENTS TO TAKE-OVER BID REGIME

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The Ontario Securities Commission

Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre - Inquiries, Complaints:

Office of the Secretary:

Published under the authority of the Commission by:

Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Fax: 416-593-8122
TTY: 1-866-827-1295

Fax: 416-593-2318



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THOMSON REUTERS

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
Fax 1-416-298-5082
www.carswell.com
Email www.carswell.com/email

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AMENDMENTS TO TAKE-OVER BID REGIME



Canadian Securities
Administrators

Autorités canadiennes
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CSA Notice of Amendments to Take-Over Bid Regime

Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* and Consequential Amendments

February 25, 2016

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to the regime governing the conduct of take-over bids set out in Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) and changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (**NP 62-203**) (together, the **Bid Amendments**)¹.

Currently, MI 62-104 governs take-over bids and issuer bids in all jurisdictions of Canada, except Ontario. In Ontario, substantively harmonized requirements for take-over bids and issuer bids are set out in Part XX of the *Securities Act* (Ontario) (the **Ontario Act**) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (the **Ontario Rule**). NP 62-203 applies in all jurisdictions of Canada. In this notice, MI 62-104, the Ontario Act, the Ontario Rule and NP 62-203 are collectively referred to as the **take-over bid regime** or **bid regime**.

In Ontario, legislative amendments were made to the Ontario Act to accommodate the adoption of MI 62-104 in Ontario, as amended by the Bid Amendments and the Early Warning Amendments (as defined below), such amended instrument, **NI 62-104**. These legislative amendments will come into effect upon proclamation by the Lieutenant Governor of Ontario. The repeal of the Ontario Rule and the related consequential amendments and changes necessary to facilitate the adoption of NI 62-104 in Ontario are referred to as the **Harmonization**.

As a result of the Bid Amendments and the Harmonization, we are also adopting consequential amendments and changes, as applicable, to each of the following, in the applicable jurisdictions in which such instruments and/or policies have been adopted (collectively, the **Consequential Amendments**):

- Multilateral Instrument 11-102 *Passport System* (**MI 11-102**);
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (**MI 13-102**);
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**);
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**);
- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (**55-104CP**);
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**);

¹ The Bid Amendments also include a technical amendment to the meaning of “market price” in MI 62-104 as it relates to securities acquired pursuant to an issuer bid that is made in the normal course on a published market other than a designated exchange in reliance on the normal course issuer bid exemption set out in paragraph 4.8(3)(c) of MI 62-104.

- Companion Policy 61-101CP to MI 61-101 (**61-101CP**); and
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**).

In addition, we are also concurrently adopting amendments and changes to the early warning system, which amendments and changes are set out in the CSA Notice of Amendments to Early Warning System dated February 25, 2016 (collectively, the **Early Warning Amendments**).

In some jurisdictions, Ministerial approval is required for these amendments and changes. Except in Ontario, provided all necessary approvals are obtained, the Bid Amendments, Consequential Amendments, and Early Warning Amendments will come into force on May 9, 2016. In Ontario, NI 62-104, amendments and changes related to the Harmonization, and the Consequential Amendments will come into force on the later of (a) May 9, 2016, and (b) the day on which certain sections of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force. Please refer to Annex N to the version of this notice published in Ontario for more information.

Substance and Purpose

The Bid Amendments will enhance the quality and integrity of the take-over bid regime and rebalance the current dynamics among offerors, offeree issuer boards of directors (**offeree boards**), and offeree issuer security holders by (i) facilitating the ability of offeree issuer security holders to make voluntary, informed and co-ordinated tender decisions, and (ii) providing the offeree board with additional time and discretion when responding to a take-over bid.

Specifically, the Bid Amendments will require that all non-exempt take-over bids

- (1) receive tenders of more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror (the **Minimum Tender Requirement**);
- (2) be extended by the offeror for an additional 10 days after the Minimum Tender Requirement has been achieved and all other terms and conditions of the bid have been complied with or waived (the **10 Day Extension Requirement**); and
- (3) remain open for a minimum deposit period of 105 days unless
 - (a) the offeree board states in a news release a shorter deposit period for the bid of not less than 35 days, in which case all contemporaneous take-over bids must remain open for at least the stated shorter deposit period, or
 - (b) the issuer issues a news release that it intends to effect, pursuant to an agreement or otherwise, a specified alternative transaction, in which case all contemporaneous take-over bids must remain open for a deposit period of at least 35 days.

We are also amending other aspects of the take-over bid regime in conjunction with these key amendments. A comprehensive discussion of the purpose and objectives of the Bid Amendments, as originally proposed, is included in the CSA Notice and Request for Comment dated March 31, 2015 (such notice, proposed bid amendments, and related changes are collectively referred to as the **2015 Materials**).

The Bid Amendments involve fundamental changes to the bid regime to establish a majority acceptance standard for all non-exempt take-over bids, a mandatory extension period to alleviate offeree security holder coercion concerns, and a 105 day minimum deposit period to address concerns that offeree boards do not have enough time to respond to an unsolicited take-over bid. The CSA has determined not to amend National Policy 62-202 *Defensive Tactics* (**NP 62-202**) in connection with these amendments. We wish to remind participants in the capital markets of the continued applicability of NP 62-202, which means that securities regulators will be prepared to examine the actions of offeree boards in specific cases, and in light of the amended bid regime, to determine whether they are abusive of security holder rights.

Background

Prior proposals

On March 14, 2013, the CSA published for comment proposed National Instrument 62-105 *Security Holder Rights Plans* and proposed Companion Policy 62-105CP *Security Holder Rights Plans* (together, the **CSA Proposal**). The Autorité des marchés financiers (the **AMF**), while participating in the publication for comment of the CSA Proposal, concurrently published a consultation paper entitled *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* (the **AMF**

Proposal). The CSA Proposal and the AMF Proposal sought to address, in different ways, concerns raised with respect to the CSA's current approach to reviewing defensive tactics adopted by offeree boards in response to, or in anticipation of, unsolicited or "hostile" take-over bids.

The comment periods for the CSA Proposal and the AMF Proposal ended on July 12, 2013. We received 72 comment letters from various market participants, including issuers, institutional investors, industry associations and law firms that reflected a broad diversity of opinions on the two proposals.

Proposed Bid Amendments

On September 11, 2014, we published CSA Notice 62-306 *Update on Proposed National Instrument 62-105 Security Holder Rights Plans and AMF Consultation Paper An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* to advise that, in light of the comments received on the CSA Proposal and AMF Proposal, and following further reflection and analysis, the CSA decided to propose specific amendments to the bid regime as an alternative harmonized policy approach for the regulation of take-over bids.

On March 31, 2015, we published the 2015 Materials setting out the specific proposed amendments to the bid regime.

Summary of Written Comments Received by the CSA

The comment period for the 2015 Materials ended on June 29, 2015. We received 22 comment letters in respect of the 2015 Materials from various market participants. We have considered the comments received and thank all of the commenters for their input.

The names of the commenters are set out in Annex A to this notice and a summary of their comments, together with our responses, are contained in Annex B to this notice.

Summary of Changes since Publication for Comment

After consideration of the comments received on the 2015 Materials, and further reflection and analysis, we have made some revisions to the 2015 Materials. Those revisions are reflected in the amendments and changes we are publishing in Annexes C and E to this notice. As these changes are not material, we are not publishing the Bid Amendments for a further comment period.

The following is a summary of the key changes that were made to the 2015 Materials. A blackline comparison showing all changes to current MI 62-104 as a result of the Bid Amendments is set out in Annex D to this notice.

(a) Minimum Deposit Period

In the 2015 Materials, we proposed that all non-exempt take-over bids be subject to a minimum deposit period of 120 days, subject to exceptions. We have determined to adjust the minimum deposit period to 105 days in light of our consideration of the potential impact of the 120 Day Requirement on an offeror's ability to utilize compulsory acquisition provisions under business corporation statutes in Canada.

Federal and provincial business corporation statutes in Canada provide a method by which an offeror that holds not less than 90% of a class of the offeree issuer's shares can acquire all of the remaining shares of the class on an expedited basis and without approval by the holders of the remaining offeree issuer shares² (the **Compulsory Acquisition Provisions**). However, the Compulsory Acquisition Provisions are generally available only where the take-over bid is accepted by holders of not less than 90% of the shares of the class subject to the bid *within 120 days after the date of the bid*. As a result, the 120 Day Requirement (and 10 Day Extension Requirement) could result in the Compulsory Acquisition Provisions not being available to an offeror following a take-over bid where the 120 Day Requirement applies.

In light of the foregoing, we have adjusted the minimum deposit period to 105 days. We believe that a minimum deposit period of 105 days will generally allow sufficient time for an offeror to conclude its bid and satisfy the subsequent 10 Day Extension Requirement before the 120th day from the date of its bid, while taking into account the potential impact that holidays in various Canadian jurisdictions may have on the offeror's ability to receive acceptances. This minimum deposit period meets the CSA's policy objective of providing offeree boards with a longer, fixed period of time to respond to a take-over bid while making it reasonably practicable for an offeror to avail itself of the Compulsory Acquisition Provisions.

² See, for example, ss. 206(2) of the *Canada Business Corporations Act*.

(b) Definition of “alternative transaction”

We have made drafting changes to the definition of “alternative transaction” and related guidance in NP 62-203 in order to clarify the intended scope of the definition and assist with its interpretation and application. In particular, we have removed clause (b) from the definition and have instead incorporated the substance of that former clause as guidance for the overall scope of the definition. Section 2.13 of NP 62-203 now states, in part, that the definition of “alternative transaction” is intended to encompass transactions agreed to or initiated by the issuer that could result in the acquisition of the issuer or the business of the issuer as an alternative to doing so by means of a take-over bid.

We have also revised the guidance in NP 62-203 in light of comments received. Since the “alternative transaction” provisions apply to the minimum deposit period for an offeror’s bid, an offeror should assess whether or not an issuer has entered into an “alternative transaction”. As such, the guidance in section 2.14 of NP 62-203 now recommends that an offeror should reasonably determine whether an issuer’s announced transaction is an “alternative transaction” before either, as the case may be, (i) reducing the initial deposit period of its outstanding take-over bid to not less than 35 days or (ii) commencing a take-over bid for the issuer with an initial deposit period of not less than 35 days.

(c) Deposit period news release

We have revised the definition of “deposit period news release” to remove the words “that is acceptable to the board of directors of the offeree issuer” when describing the initial deposit period stated in the offeree issuer’s news release. We presume that any initial deposit period stated by an offeree issuer in respect of a bid will, in fact, be acceptable to the offeree board and have removed that concept from the definition because it is not otherwise relevant to the operation of the definition.

(d) Mandatory 10-day extension period

We have clarified that, except in the case of a partial take-over bid, the mandatory 10-day extension period for a bid referred to in paragraph 2.31.1(a) of NI 62-104 must be a period of *at least* 10 days and not, as the original drafting may have suggested, exactly 10 days. We note, however, that if an offeror chooses to extend its bid after expiry of the initial deposit period for a period of more than 10 days, the bid regime still requires that the offeror take up securities deposited during the extension period not later than 10 days after deposit of the securities.

We have also clarified in section 2.31.2 of NI 62-104 that, in the case of a partial take-over bid, the mandatory 10-day extension period must not exceed 10 days, nor can an offeror extend its partial take-over bid after the expiry of the mandatory 10-day extension period. As noted in the 2015 Materials, an extension period of more than 10 days is not necessary because a partial take-over bid is for a fixed number of securities subject to pro-ration, such that the offeror will have effectively achieved its desired minimum number of tenders before commencement of the mandatory 10-day extension period and the number of securities ultimately taken up will not increase as a result of tenders during the mandatory 10-day extension period.

(e) Proportionate take up mechanics for partial take-over bids

A number of commenters on the 2015 Materials indicated that it would be helpful if the CSA provided examples showing how the proportionate take up provisions applicable to partial take-over bids would apply after adoption of the Bid Amendments. We have added examples in section 2.17 of NP 62-203.

(f) Transition

We have included a transition provision in section 7.1 of NI 62-104 to clarify the application of the Bid Amendments to take-over bids made in respect of offeree issuers in certain circumstances both before and after the effective date of the Bid Amendments.

Local Matters

Annex N is being published in any local jurisdiction that is making related changes to local securities laws, including changes to local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

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Annex N	Local Matters

Questions

Please refer your questions to any of the following:

Ontario Securities Commission

Naizam Kanji
Director
Office of Mergers & Acquisitions
Ontario Securities Commission
(416) 593-8060
nkanji@osc.gov.on.ca

Jason Koskela
Senior Legal Counsel
Office of Mergers & Acquisitions
Ontario Securities Commission
(416) 595-8922
jkoskela@osc.gov.on.ca

Adeline Lee
Legal Counsel
Office of Mergers & Acquisitions
Ontario Securities Commission
(416) 595-8945
alee@osc.gov.on.ca

Autorité des marchés financiers

Lucie J. Roy
Senior Director, Corporate Finance
Autorité des marchés financiers
(514) 395-0337, ext. 4361
Toll free: 1 (877) 525-0337
lucie.roy@lautorite.qc.ca

Andrée-Anne Arbour-Boucher
Senior Securities Analyst, Corporate Finance
Autorité des marchés financiers
(514) 395-0337, ext. 4394
Toll free: 1 (877) 525-0337
andree-anne.arbour-boucher@lautorite.qc.ca

Alexandra Lee
Senior Policy Adviser, Corporate Finance
Autorité des marchés financiers
(514) 395-0337, ext. 4465
Toll free: 1 (877) 525-0337
alexandra.lee@lautorite.qc.ca

British Columbia Securities Commission

Gordon Smith
Acting Manager, Legal Services
Corporate Finance
British Columbia Securities Commission
(604) 899-6656
Toll free across Canada: 1 (800) 373-6393
gsmith@bcsc.bc.ca

Alberta Securities Commission

Tracy Clark
Senior Legal Counsel
Corporate Finance
Alberta Securities Commission
(403) 355-4424
tracy.clark@asc.ca

Lanion Beck
Senior Legal Counsel
Corporate Finance
Alberta Securities Commission
(403) 355-3884
lanion.beck@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Sonne Udemgba
Deputy Director, Legal, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
(306) 787-5879
sonne.udemgba@gov.sk.ca

Manitoba Securities Commission

Chris Besko
Director, General Counsel
Manitoba Securities Commission
(204) 945-2561
chris.besko@gov.mb.ca

ANNEX A**NAMES OF COMMENTERS**

Ad Hoc Senior Securities Practitioners Group
Anita Anand
Caisse de dépôt et placement du Québec
Canadian Advisory Council for Canadian CFA Institute Societies
Canadian Coalition for Good Governance
Canadian Foundation for Advancement of Investor Rights
Canadian Investor Relations Institute
Canadian Oil Sands Limited
Dentons Canada LLP
Mike Devereux
Donald G. Gilchrist
Hansell LLP
Hurt Capital Inc.
Institute of Corporate Directors
Institutional Shareholder Services
Investment Industry Association of Canada
McCarthy Tétrault LLP
McMillan LLP
Norton Rose Fulbright Canada LLP
Osler, Hoskin & Harcourt LLP
Simon A. Romano and Ramandeep K. Grewal
Richard Steinberg, Aaron Atkinson and Bradley Freelan

ANNEX B

SUMMARY OF COMMENTS AND CSA RESPONSES

The following is a summary of comments and CSA responses in respect of the proposed amendments to MI 62-104, proposed changes to NP 62-203 and proposed consequential amendments (collectively, the “**Proposed Bid Amendments**”) published on March 31, 2015 in the 2015 Materials. Defined terms used herein have the same meaning as is ascribed to them in the notice to which this is appended.

PART I. GENERAL COMMENTS

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
A.	COMMENTS ON KEY ELEMENTS OF THE PROPOSED BID AMENDMENTS		
1.	Whether the proposed Minimum Tender Requirement is appropriate	<p>The majority of commenters who commented on this aspect of the Proposed Bid Amendments are supportive of the Minimum Tender Requirement. Commenters generally agreed that the Minimum Tender Requirement, coupled with the 10 Day Extension Requirement, addresses the “pressure to tender” or coercion concerns raised by the CSA and contributes to the enhancement of the quality and integrity of the take-over bid regime.</p> <p>Three commenters suggested that there may be certain circumstances where the Minimum Tender Requirement should not apply.</p> <p>Two commenters raised the concern that there may be circumstances where the Minimum Tender Requirement would prevent a non-coercive bid from proceeding. For example, where a control block holder or other insiders do not support a transaction because they have a stake in the outcome that is different from that of the minority security holders, it may not be practically possible for an offeror to achieve majority acceptance. Rather than excluding securities held in a control block or by insiders from being counted toward the Minimum Tender Requirement, the commenters recommend addressing this concern through exemptive relief from the Minimum Tender Requirement where the CSA determines it to be appropriate. The commenters suggest that the CSA should include guidelines in NP 62-203 outlining the circumstances in which the CSA would be likely to grant such exemptive relief.</p> <p>One commenter argued that the Minimum Tender Requirement should not apply where the offeror (whether alone or with joint actors) already exercises legal control over the offeree issuer.</p>	<p>We acknowledge the comments of support for the Minimum Tender Requirement.</p> <p>We acknowledge that enhanced leverage for blockholders is a likely consequence of the Bid Amendments; however, the CSA believe that such leverage is inherent to the new “majority tender” premise of the Bid Amendments.</p> <p>We did not make any changes to the Minimum Tender Requirement to accommodate the position that there may be specific circumstances where the Minimum Tender Requirement should not apply. We do not believe that there is a compelling basis for effectively creating two different minimum tender regimes depending on the control dynamic of the issuer.</p> <p>Since all considerations of exemptive relief are based on unique fact circumstances, we do not think that it is appropriate to provide guidance that attempts to predict or outline in advance the circumstances under which securities regulatory authorities would be likely to grant exemptive relief from the Minimum Tender Requirement.</p>
2.	Whether the proposed 10 Day Extension Requirement is appropriate	<p>The majority of commenters who commented on this aspect of the Proposed Bid Amendments are supportive of the 10 Day Extension Requirement. Commenters generally agreed that the 10 Day</p>	<p>We acknowledge the comments of support for the 10 Day Extension Requirement.</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
		Extension Requirement addresses the “pressure to tender” or coercion concerns raised by the CSA and contributes to the enhancement of the quality and integrity of the take-over bid regime.	
3.	Whether the proposed 120 Day Requirement is appropriate	<p>Almost all commenters who commented on this aspect of the Proposed Bid Amendments are generally supportive of providing offeree boards with a longer, fixed period of time to consider and respond to a take-over bid. They agreed with the CSA’s concern that under the current regime offeree boards do not have enough time to respond to unsolicited take-over bids with appropriate action, such as seeking value-maximizing alternatives or developing and articulating their views on the merits of the bid.</p> <p>Although a majority of commenters feel that a minimum of 120 days is an appropriate period of time, six commenters suggested that 120 days is too long, with most of these commenters indicating that 90 days would provide the benefits of more time without the disadvantages of an overly long bid period. These commenters noted in particular that:</p> <ul style="list-style-type: none"> • a 120 day bid period may deter potential offerors (for a number of reasons, including increased financing costs and the potential for increased competition associated with a longer bid period), resulting in a reduction of the level of hostile bid activity and missed opportunities for security holders; and • market data suggests that 90 days has historically been enough time to draw out competing bids and alternative transactions. <p>Only one commenter is not supportive of increasing the existing 35 day minimum deposit period.</p>	We acknowledge the comments in support of, and expressing concerns with, the proposed 120 Day Requirement. We have determined to adjust to the minimum deposit period to 105 days for the reasons described below.
		One commenter raised the concern that the 120 day minimum deposit period may result in compulsory acquisition provisions of certain Canadian corporate statutes (such as the <i>Canada Business Corporations Act</i>) not being available to offerors following a take-over bid. The right to acquire securities under statutory compulsory acquisition provisions is only available where, within 120 days of the date of a take-over bid, the bid is accepted by the holders of not less than 90% of the securities of the applicable class. The commenter argued that reducing the 120 day period by a modest amount – such as to 115 or 110 days – would likely not address the issue, noting that in practice it is typically not until an offeror has extended a bid on at least one occasion that the 90% threshold is met.	Upon further review of the Canadian corporate law compulsory acquisition provisions, we have determined to adjust the minimum deposit period to 105 days. We believe that a minimum deposit period of 105 days will generally allow sufficient time for an offeror to conclude its bid and satisfy the subsequent 10 Day Extension Requirement before the 120 th day from the date of its bid, while taking into account the potential impact that holidays in various Canadian jurisdictions may have on the offeror’s ability to receive acceptances. We believe

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
			that this minimum deposit period will meet the CSA's policy objective of providing offeree issuer boards with a longer, fixed period of time to respond to a take-over bid while making it reasonably practicable for an offeror to avail itself of the compulsory acquisition provisions if its bid has been accepted by offeree security holders within 120 days from the date of its bid.
B.	COMMENTS ON SPECIFIC ASPECTS OF THE PROPOSED BID AMENDMENTS		
1.	Issues related to the Minimum Tender Requirement in the context of partial take-over bids	<p>Three commenters raised concerns over the application of the Minimum Tender Requirement in the context of partial take-over bids.</p> <p>One such commenter suggested that offerors should have the option of choosing between the Minimum Tender Requirement and a "minimum consent requirement" in the context of a partial take-over bid. This would alleviate the concern that the Minimum Tender Requirement, combined with the lack of withdrawal rights during the mandatory 10 day extension period, may reduce the likelihood of successful partial take-over bids and thus strongly discourage offerors from making partial take-over bids. Such minimum consent requirement would require that offeree security holders evidence their consent to a partial take-over bid pursuant to a written instrument and not have to tender their securities until the mandatory 10 day extension period.</p> <p>Similarly, another commenter argued that the Proposed Bid Amendments do not fully resolve the coercion and "pressure to tender" concerns for partial take-over bids because offeree security holders have different incentives to tender as compared to a take-over bid for all securities. The commenter proposed to address this issue by including a "form of acceptance" in the bid circular through which offeree security holders could separately vote for or against the partial bid rather than be obliged to support the bid by tendering to it.</p> <p>One commenter raised the concern that the Minimum Tender Requirement may preclude potentially desirable partial take-over bids such as, for example, "any and all" partial bids that accommodate a block trade at a greater than 15% premium to market price but which are also open to all other security holders.</p>	<p>We did not make any changes to the Minimum Tender Requirement to accommodate the comments made in relation to partial take-over bids.</p> <p>The suggestions proposed by the commenters would require unduly complex changes to the Proposed Bid Amendments and result in a separate regime for partial take-over bids. We think those consequences would be undesirable and unnecessary, particularly given that partial take-over bids are rare. However, we will monitor the impact of the Bid Amendments on partial take-over bids.</p>
2.	Issues concerning proposals to allow a shortened minimum	Eight commenters raised various concerns or suggestions in relation to the proposals for shortened deposit periods either initiated by an	We did not make any changes to the Proposed Bid Amendments to accommodate the concerns raised

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	<p>deposit period of not less than 35 days when an offeree board issues a deposit period news release announcing a shorter minimum bid period or where there is a specified alternative transaction</p>	<p>offeree board through the issuance of a deposit period news release or automatically in the case of a specified alternative transaction.</p> <p>Among the four commenters who raised concerns about an offeree board's ability to reduce the minimum 120 day deposit period through the issuance of a deposit period news release:</p> <ul style="list-style-type: none"> • two commenters suggested that it creates uncertainty and/or confusion for security holders; • two commenters noted that it may reduce the probability of competing bids; and • two commenters recommended that the power to reduce the minimum deposit period to 35 days should be in the hands of offeree security holders, rather than the offeree board. <p>One commenter raised the issue that the offeree board's ability to shorten the minimum deposit period could provide for potentially different outcomes for an unsupported offeror depending on whether a competing supported transaction is structured as a take-over bid or as an alternative form of transaction. The commenter suggested three alternatives to the CSA's proposal: (1) an automatic reduction to 35 days (or some other shorter default period) upon the announcement by an offeree issuer of a supported transaction, regardless of the structure adopted; (2) a minimum deposit period of 120 days regardless of the structure adopted; or (3) giving offeree issuers the ability to enforce equalization of timing beyond 120 days.</p> <p>One commenter raised concerns over the automatic reduction to 35 days in cases where an offeree issuer has agreed to enter into a plan of arrangement as a hostile offeror could gain an advantage by having its bid accepted before the plan is approved.</p> <p>Two commenters recommended that, to address the fact that alternative transactions usually take more than 35 days to be completed and a hostile offeror may benefit from a reduced minimum deposit period, in the case of an alternative transaction, offeree security holders should have the opportunity to consider both offers at the same time. Accordingly, these commenters suggested</p>	<p>in respect of shortened minimum deposit periods for a bid.</p> <p>We believe that the framework for reducing a bid period under the Proposed Bid Amendments, including the requirements that the offeree board issue and file a news release and that the offeror send a notice of variation upon shortening its bid, is adequately clear.</p> <p>We believe that the offeree board's ability to reduce the minimum deposit period would not, in and of itself, reduce the probability of competing bids.</p> <p>We believe that it would be impracticable for security holders to be responsible for deciding whether and when to reduce the minimum deposit period, and that security holder decision-making is appropriately captured by the Minimum Tender Requirement.</p> <p>We recognize that hostile offerors or offeree issuers may make tactical use of the timing required to complete different transaction structures under the Bid Amendments. However, the Bid Amendments are not premised on equalization of timing for all bids and alternative transactions, and are instead intended to preserve both offeree board discretion and "first mover advantage" on the part of an offeror, while avoiding an excessively complex regime.</p>

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		that the minimum deposit period for any then outstanding or subsequent take-over bids should be the expiry date of the alternative transaction, rather than 35 days from the date of the bid.	
		One commenter suggested that an offeree issuer should be able to shorten the minimum deposit period whether or not a take-over bid is on the horizon (e.g. by announcing that for the next two years the minimum deposit period for all formal take-over bids will be 40 days). This could have the effect of encouraging more take-over bids.	<p>To ensure clarity as to the application of a shortened deposit period, we believe that it is preferable that the Bid Amendments permit offeree boards to adjust the timing of a deposit period only in the context of a specific take-over bid.</p> <p>This framework would not preclude an offeree board from announcing its willingness to reduce the minimum deposit period for any future take-over bid. However, such announcement will not in itself have the effect of reducing the deposit period for future-commenced bids.</p>
C.	OTHER COMMENTS		
1.	Role of security holder rights plans under the new regime, and defensive tactics more generally	<p>Nine commenters raised concerns over the current lack of specific guidance from the CSA on the use of security holders rights plans under the new regime. In particular, the commenters suggested that the CSA should provide more guidance on: (1) the treatment of rights plans as they relate to deposit periods; and (2) the use of rights plans as they relate to exempt take-over bids or “creeping bids”.</p> <p>One commenter suggested that the CSA could address the concerns raised by including a transition period to allow issuers to amend their rights plans to comply with the Proposed Bid Amendments, or include express language in the legislation that provisions in indentures, agreements or constating documents of issuers will not be binding on any person to the extent that such provisions are contrary to the Proposed Bid Amendments.</p> <p>Several commenters suggested that the CSA should undertake a broader review of NP 62-202 with two commenters noting the need for the CSA to look at voting pills in particular.</p>	We wish to remind participants in the capital markets of the applicability of NP 62-202, which means that securities regulatory authorities will be prepared to examine the actions of offeree boards in specific cases, and in light of the amended bid regime, to determine whether they are abusive of security holder rights.
2.	Technical drafting considerations with respect to the text of the Proposed Bid Amendments	A number of commenters raised technical drafting considerations with respect to the text of the Proposed Bid Amendments.	We thank the commenters for their input. In response to the comments received we have made certain discrete drafting changes to the Proposed Bid Amendments. We note that certain proposed drafting changes were beyond the scope of the Proposed Bid Amendments and, as a result, could not be fully

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			considered by the CSA at this time.

PART II. COMMENTS ON SPECIFIC QUESTIONS

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1.	Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to a deposit period news release and the ability of an offeror to reduce the minimum deposit period for its bid as a result of the issuance of a deposit period news release?	One commenter suggested that an offeror should be allowed to account for the possibility of a reduced deposit period in its original bid documents. If the reduced period is activated, the offeror would be required to issue a news release only, rather than also having to prepare and mail a notice of variation.	We did not make any changes to the Proposed Bid Amendments to address the comment. Although allowing an offeror to rely solely on a news release would result in expediency for the offeror, we believe that it would come at the expense of the interests of security holders who should be assured of receiving a notice of variation in all circumstances where the terms of a bid are varied.
2.	The Proposed Bid Amendments include a definition of “alternative transaction” that is intended to encompass transactions generally involving the acquisition of an issuer or its business. Do you agree with the scope of the definition of “alternative transaction”? If not, please explain why you disagree with the scope and what changes to the definition you would propose.	<p>Three commenters agreed with the scope of the definition.</p> <p>One commenter suggested that a broader definition of “alternative transaction” is appropriate and proposed that the definition import the concept of a transaction agreed to by the offeree issuer’s board that “affects materially” the control of the issuer. The commenter expressed concern that, absent this change, an offeree issuer board could undertake a transaction that materially alters control of the issuer without security holder approval (such as a private placement of voting securities) and without triggering the application of a shortened deposit period. Similarly, another commenter stated that it is unclear how the “alternative transaction” definition would apply to transactions that do not require security holder approval or how the definition distinguishes between a legitimate alternative transaction and a transaction that may be viewed as depriving offeree security holders of the ability to adequately respond to a take-over bid.</p> <p>One commenter proposed that clause (b) of the definition encompassing a transaction involving the acquisition of an issuer should be expanded to include the acquisition of the “business of the issuer”. Another commenter suggested that clause (b) of the definition was duplicative and somewhat unclear given the existing scope of clause (a) and (c).</p>	<p>We thank the commenters for their input.</p> <p>We have not revised the definition of “alternative transaction” to include transactions that “affect materially” the control of the issuer if they are not otherwise already captured within the definition. We note, however, that a transaction initiated by an offeree board in the context of a take-over bid may, regardless of whether or not it is an “alternative transaction”, still be subject to review under NP 62-202 depending on the circumstances.</p> <p>We agree with each of these comments and have made drafting changes to the definition of “alternative transaction” and related guidance in NP 62-203 in order to clarify the intended scope of the definition and assist with the interpretation and application of the definition. In particular, we have removed clause (b) from the definition and have instead</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
		<p>One commenter noted that the purpose of the definition should cover all transactions that offeree security holders can effectively evaluate and compare the payment offered with the outstanding unsolicited bid.</p>	<p>incorporated the substance of that former clause as guidance for the overall scope of the definition. Section 2.13 of NP 62-203 now states, in part, that the definition of “alternative transaction” is intended to encompass transactions agreed to or initiated by the issuer that could result in the acquisition of the issuer or the business of the issuer as an alternative to doing so by means of a take-over bid.</p>
3.	<p>Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to alternative transactions? Does the proposed policy guidance in sections 2.13 and 2.14 of NP 62-203 assist with interpretation of the alternative transaction provisions?</p>	<p>One commenter noted that the proposed policy guidance gives additional clarity.</p> <p>One commenter raised the issue that an existing offeror may have difficulty making a prompt decision as to whether its then-outstanding offer can be varied to accelerate the expiry date based on a news release by the offeree issuer announcing an alternative transaction. The commenter questions whether such a news release should contain the same specificity as that contemplated by a “deposit period news release”. The commenter also suggested that consideration should be given as to whether an offeree issuer should be required to make a positive statement about the treatment of its announcement to avoid uncertainty in the market and for then-outstanding offerors.</p> <p>Two commenters noted that an announced transaction is either an “alternative transaction” or it is not and therefore the proposed policy guidance concerning reasonable interpretation or issuer disclosure is actually unhelpful.</p>	<p>We thank the commenters for their input.</p> <p>We believe that the proposed framework for “alternative transactions” strikes the most appropriate balance among offerors, offeree boards and offeree issuer security holders, while intending to be practical in application.</p> <p>We have, however, revised the guidance in NP 62-203 in light of comments. Since the “alternative transaction” provisions apply to the minimum deposit period for an offeror’s bid, we believe that it is for an offeror to assess whether or not an issuer has entered into an “alternative transaction”. As such, the guidance in section 2.14 of NP 62-203 now recommends that an offeror should reasonably determine whether an issuer’s announced transaction is an “alternative transaction” before either reducing the initial deposit period of its outstanding take-over bid to not less than 35 days or commencing a take-over bid for the issuer with an initial deposit period of not less than 35 days, as the case may be.</p>
4.	<p>Would policy guidance concerning the interpretation or application of the Proposed Bid Amendments as they relate to partial take-over bids be useful? If so, please explain.</p>	<p>All commenters who commented on this issue suggested that numerical examples would be helpful additions to the policy guidance.</p>	<p>We acknowledge these comments and have provided numerical examples in section 2.17 of NP 62-203.</p>
5.	<p>The Proposed Bid Amendments include revisions to the take up and payment and withdrawal right provisions in the take-over bid regime. Do you agree with</p>	<p>All commenters who responded to this question generally agreed with the revisions, particularly with respect to limiting withdrawal rights for securities deposited to a partial take-over bid.</p>	<p>We thank the commenters for their input.</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
	<p>these proposed changes or foresee any unintended consequences as a result of these changes? In particular, do you agree that there should not be withdrawal rights for securities deposited to a partial take-over bid prior to the expiry of the minimum deposit period for so long as they are not taken up until the end of the mandatory 10 day extension period?</p>	<p>One commenter stated that it expects that the Proposed Bid Amendments may reduce the likelihood of successful partial take-over bids and thus discourage offerors from making partial take-over bids. Another commenter stated that partial take-over bids are likely to become even less common if the Proposed Bid Amendments are implemented.</p>	<p>We did not make any changes to the Proposed Bid Amendments to address concerns regarding the possible inhibition of partial take-over bids, which we acknowledge will likely continue to be rare.</p>
6.	<p>Are the current time limits set out in subsections 2.17(1) and (3) sufficient to enable directors to properly evaluate an unsolicited take-over bid and formulate a meaningful recommendation to security holders with respect to such bid?</p>	<p>Three commenters noted that the current time limits set out in subsections 2.17(1) and (3) are reasonable.</p> <p>Two commenters noted that, while the time required for an offeree board to issue a directors' circular is not exactly the same as the corresponding deadline under U.S. law, its close proximity has proven convenient for inter-listed issuers and any consideration of a change should be mindful of cross-border coordination.</p> <p>Four commenters raised the concern that the 15 day period in subsection 2.17(1) may be too short, particularly given the 120 Day Requirement. Among these, one commenter suggested increasing the timeframe to 30 days, one commenter suggested increasing the timeframe to 28 days and one commenter suggested increasing the timeframe to the lesser of 30 days following the commencement of the bid, and 20 days prior to the end of the minimum deposit period.</p>	<p>We thank the commenters for their input.</p> <p>We did not make any changes to the current time limits set out in subsections 2.17(1) and (3). We believe that the current time limits will ensure that, regardless of the expiry date of any given bid, information relating to the offeree board's evaluation of the take-over bid will be provided in a timely manner to enable security holders to make fully informed decisions.</p>
7.	<p>Do you anticipate any changes to market activity or the trading of offeree issuer securities during a take-over bid as a result of the Proposed Bid Amendments? If so, please explain.</p>	<p>Three commenters noted that they do not anticipate any significant changes to market activity or trading during a take-over bid as a result of the Proposed Bid Amendments. Among these, one commenter noted that the extended timeframe to bid completion due to the 120 Day Requirement could result in a widening of the arbitrage discount on bids, particularly in situations where the market believes there is a relatively low probability of a competing bid.</p> <p>One commenter noted that if market participants wish to try to profit from price discrepancies or otherwise, they will likely continue to do so within the regulatory framework regardless of the final form of the Proposed Bid</p>	<p>We thank the commenters for their input.</p>

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		Amendments. One commenter remarked that it generally agrees with the expected impacts described in the 2015 Materials.	

ANNEX C

AMENDMENTS TO MULTILATERAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS

1. ***Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.***
2. ***The title of the Instrument is replaced with “National Instrument 62-104 Take-Over Bids and Issuer Bids”.***
3. ***Section 1.1 is amended***

(a) *by adding the following definition:*

“alternative transaction” means, for an issuer:

- (a) an amalgamation, merger, arrangement, consolidation, or any other transaction of the issuer, or an amendment to the terms of a class of equity securities of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder’s consent, regardless of whether the equity security is replaced with another security, but does not include
 - (i) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, except to an extent that is nominal in the circumstances,
 - (ii) a circumstance in which the issuer may terminate a holder’s interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership, or
 - (iii) a transaction solely between or among the issuer and one or more subsidiaries of the issuer,
- (b) a sale, lease or exchange of all or substantially all the property of the issuer if the sale, lease or exchange is not in the ordinary course of business of the issuer, but does not include a sale, lease or exchange solely between or among the issuer and one or more subsidiaries of the issuer,;

(b) *in the definition of “associate” by*

- (i) *adding “or” at the end of paragraph (c), and***
- (ii) *replacing paragraph (d) with:***

- (d) a relative of that person, if the relative has the same home as that person, including
 - (i) the spouse or, in Alberta, adult interdependent partner of that person, or
 - (ii) a relative of the person’s spouse or, in Alberta, adult interdependent partner; ***and***

(c) *by adding the following definitions:*

“deposit period news release” means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 105 days and not less than 35 days, expressed as a number of days from the date of the bid;

“initial deposit period” means the period, including any extension, during which securities may be deposited under a take-over bid but does not include

- (a) a mandatory 10-day extension period, or

- (b) any extension to the period during which securities may be deposited if the extension is made after a mandatory 10-day extension period;

“mandatory 10-day extension period” means the period referred to in paragraph 2.31.1(a);

“partial take-over bid” means a take-over bid for less than all of the outstanding securities of the class of securities subject to the bid;.

4. Subsection 1.11(3) is amended by adding “and subsection 4.8(3)” after “section 4.1”.

5. Section 2.11 is amended by adding the following subsections:

- (1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.
- (5) If, under subsection (1), an offeror is required to send a notice of change before the expiry of the initial deposit period
- (a) the initial deposit period for the offeror’s take-over bid must not expire before 10 days after the date of the notice of change, and
- (b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of change..

6. Section 2.12 is amended

- (a) **in subsection (1) by adding “any reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or” before “any extension”,**
- (b) **by adding the following subsections:**
- (1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.
- (3.1) If, under subsection (1), an offeror is required to send a notice of variation before the expiry of the initial deposit period
- (a) the initial deposit period for the offeror’s take-over bid must not expire before 10 days after the date of the notice of variation, and
- (b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of variation.,
- (c) **in subsection (4) by replacing “and (3)” with “, (3) and (3.1)” and adding “, other than an extension in respect of the mandatory 10-day extension period,” before “resulting from the waiver”,**
- (d) **in subsection (5) by replacing “A variation” with “An offeror must not make a variation”, deleting “a take-over bid or”, and deleting “must not be made”, and**
- (e) **by adding the following subsection:**
- (6) An offeror must not make a variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1..

7. Subsection 2.17(3) is amended by replacing “period during which securities may be deposited under the bid” with “initial deposit period”.

8. Section 2.26 is amended

- (a) *in subsection (1) by deleting “a take-over bid or”, and*
- (b) *by repealing subsection (4).*

9. The Instrument is amended by adding the following section:

Proportionate take up and payment – take-over bids

2.26.1 (1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction..

10. Section 2.28 is amended by replacing “under a take-over bid or an issuer bid for” with “under an issuer bid for a minimum deposit period of”.

11. The Instrument is amended by adding the following sections:

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 105 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror’s take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

- (a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the deposit period news release referred to in subsection (1) and the bid has yet to expire;
- (b) the offeror, after the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of expiry of the take-over bid referred to in subsection (1),
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

- (a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the news release and the bid has yet to expire;

- (b) the offeror, after the issuance of the news release, commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of completion or abandonment of the alternative transaction,
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a)..

12. **Section 2.29 is amended by deleting “a take-over bid or”.**

13. **The Instrument is amended by adding the following section:**

Restriction on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following apply:

- (a) a period of 105 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, has elapsed from the date of the bid;
- (b) all the terms and conditions of the bid have been complied with or waived;
- (c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn..

14. **Section 2.30 is amended**

(a) **by adding the following subsection:**

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder must not withdraw securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

- (a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and
- (b) ending at the time the offeror becomes obligated under either subsection 2.32.1(7) or (8) to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6),.

(b) **in subsection (2) by replacing “The right of withdrawal under paragraph (1)(b) does not apply” with “Despite paragraph (1)(b), a security holder must not withdraw securities deposited”,**

(c) **by adding the following paragraph after paragraph 2(a):**

(a.1) in the case of a partial take-over bid, the securities were deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or,

(d) **in paragraph (2)(b) by**

- (i) **replacing “one or both of the following circumstances occur” with “any of the following apply”,**
- (ii) **replacing “a variation in the terms of the bid” with “there is a variation in the terms of a take-over bid or issuer bid” in subparagraphs (i) and (ii), and**
- (iii) **adding the following subparagraph:**
 - (iii) in the case of a take-over bid, there is a variation in the terms after the expiry of the initial deposit period consisting of either an increase in the consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation..

15. Section 2.31 is replaced with the following:

2.31 If an offeror purchases securities under subsection 2.2(3), the purchased securities must not be counted in determining whether the minimum tender requirement in paragraph 2.29.1(c) is satisfied and the purchase does not reduce the number of securities the offeror is bound to take up under the take-over bid..

16. The Instrument is amended by adding the following sections:

Mandatory 10-day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a take-over bid pursuant to subsection 2.32.1(1), the offeror must

- (a) extend the period during which securities may be deposited under the bid for a period of at least 10 days, and
- (b) promptly issue and file a news release disclosing the following:
 - (i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,
 - (ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,
 - (iii) that the period during which securities may be deposited under the bid has been extended for the mandatory 10-day extension period, and
 - (iv) in the case of a take-over bid that
 - (A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible, and in any event not later than 3 business days after the securities are taken up, or
 - (B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event will take up the deposited securities not later than one business day after the expiry of the mandatory 10-day extension period and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up.

Time limit on extension – partial take-over bids

2.31.2 In the case of a partial take-over bid,

- (a) the mandatory 10-day extension period must not exceed 10 days, and
- (b) the bid must not be extended after the expiry of the mandatory 10-day extension period..

17. Section 2.32 is amended

- (a) **in subsection (1) by deleting “a take-over bid or”,**
- (b) **in subsection (2) by**
 - (i) **deleting “a take-over bid or”, and**
 - (ii) **deleting “the” before “securities deposited”,**
- (c) **in subsection (3) by**
 - (i) **deleting “a take-over bid or”, and**
 - (ii) **deleting “the” after “the deposit of”,**

- (d) **in subsection (4) by replacing** “An offeror may not extend its take-over bid or” **with** “An offeror must not extend its”,
- (e) **in subsection (5) by**
 - (i) **deleting** “a take-over bid or”,
 - (ii) **deleting** “only” **before** “required to take up”, **and**
 - (iii) **adding** “only” **before** “the maximum number of securities”, **and**
- (f) **in subsection (6) by deleting** “a take-over bid or”.

18. The Instrument is amended by adding the following section:

Obligation to take up and pay for deposited securities – take-over bids

2.32.1(1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period, all of the following apply:

- (a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed;
- (b) all the terms and conditions of the bid have been complied with or waived;
- (c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10-day extension period, or an extension period made after the mandatory 10-day extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid beyond the expiry of the mandatory 10-day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the offeror must extend the bid without the offeror first taking up the securities which are subject to the rights of withdrawal.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is required to take up, by the time specified in that subsection, only the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the mandatory 10-day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10-day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

19. Section 6.1 is replaced with the following:

6.1(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction..

20. Section 6.2 is amended by renumbering it as subsection 6.2(1) and by adding the following subsection:

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision..

21. Section 7.1 is replaced with the following:

7.1 The take-over bid or issuer bid provisions in securities legislation that were in force immediately before May 9, 2016, continue to apply in respect of

- (a) every take-over bid and issuer bid commenced before May 9, 2016,
- (b) any take-over bid in respect of the securities of an offeree issuer subject to a take-over bid referred to in paragraph (a) commenced on or subsequent to May 9, 2016 and prior to the date of the expiry of a take-over bid referred to in paragraph (a), and
- (c) any take-over bid in respect of the securities of an issuer that issued a news release before May 9, 2016 announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, commenced on or subsequent to May 9, 2016 and prior to the date of completion or abandonment of the alternative transaction..

22. Section 7.2 is amended

(a) **by renumbering it as subsection 7.2(1) and by replacing “This” with “Except in Ontario, this”, and**

(b) **by adding the following subsection:**

- (2) In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force..

23. Form 62-104F1 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part 1.

24. Form 62-104F1 is amended by adding the following item:

Item 9.1. Minimum Tender Requirement and Mandatory Extension Period

State the following in italics and boldface type at the top of the cover page of the take-over bid circular:

No securities tendered to this bid will be taken up until (a) more than 50% of the outstanding securities of the class sought (excluding those securities beneficially owned, or over which control or direction is exercised by the offeror or any person acting jointly or in concert with the offeror) have been tendered to the bid, (b) the minimum deposit period required under applicable securities laws has elapsed, and (c) any and all other conditions of the bid have been complied with or waived, as applicable. If these criteria are met, the offeror will take up securities deposited under the bid in accordance with applicable securities laws and extend its bid for an additional minimum period of 10 days to allow for further deposits of securities..

25. Form 62-104F2 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part 1.

26. Form 62-104F3 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part 1.

27. Form 62-104F4 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part 1.

28. Form 62-104F4 is amended by replacing “revison” with “revision” in item 14.

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29. **Form 62-104F5 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part 1.**
30. **Form 62-104F5 is amended by adding the following paragraph under subsection (2) of item 3:**
- (a.1) if one of the terms referred to in paragraph (a) is the mandatory 10-day extension period required pursuant to paragraph 2.31.1(a) of the Instrument, the number of securities deposited under the take-over bid and not withdrawn as at the date of the variation,.
31. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX D

BLACKLINE EXTRACTS SHOWING AMENDMENTS TO MI 62-104

~~MULTILATERAL~~NATIONAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS

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~~MULTILATERAL~~**NATIONAL INSTRUMENT 62-104**
TAKE-OVER BIDS AND ISSUER BIDS

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument,

“**Act**” means, in the jurisdiction, the statute referred to in Appendix B to National Instrument 14-101 *Definitions*;

“**alternative transaction**” means, for an issuer:

- (a) an amalgamation, merger, arrangement, consolidation, or any other transaction of the issuer, or an amendment to the terms of a class of equity securities of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include
 - (i) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, except to an extent that is nominal in the circumstances,
 - (ii) a circumstance in which the issuer may terminate a holder's interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership, or
 - (iii) a transaction solely between or among the issuer and one or more subsidiaries of the issuer,
- (b) a sale, lease or exchange of all or substantially all the property of the issuer if the sale, lease or exchange is not in the ordinary course of business of the issuer, but does not include a sale, lease or exchange solely between or among the issuer and one or more subsidiaries of the issuer;

“**associate**”, when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which a person serves as trustee or in a similar capacity, or
- (d) a relative of that person, if the relative has the same home as that person, including
 - (i) the spouse or, in Alberta, adult interdependent partner of that person, or
 - (ii) a relative of the person's spouse or, in Alberta, adult interdependent partner if the relative has the same home as that person;

“**bid circular**” means a bid circular prepared in accordance with section 2.10;

“**business day**” means a day other than a Saturday, a Sunday or a day that is a statutory holiday in the jurisdiction;

“**class of securities**” includes a series of a class of securities;

“**consultant**” has the same meaning as in National Instrument 45-106 *Prospectus Exemptions*;

“**deposit period news release**” means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 105 days and not less than 35 days, expressed as a number of days from the date of the bid;

“equity security” means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets;

“initial deposit period” means the period, including any extension, during which securities may be deposited under a take-over bid but does not include

- (a) a mandatory 10-day extension period, or
- (b) any extension to the period during which securities may be deposited if the extension is made after a mandatory 10-day extension period;

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and also includes an acquisition or redemption of securities of the issuer by the issuer from those persons, but does not include an offer to acquire or redeem, or an acquisition or redemption if

- (a) no valuable consideration is offered or paid by the issuer for the securities,
- (b) the offer to acquire or redeem, or the acquisition or redemption is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders, or
- (c) the securities are debt securities that are not convertible into securities other than debt securities;

“mandatory 10-day extension period” means the period referred to in paragraph 2.31.1(a);

“offer to acquire” means

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not the offer has been solicited, or
- (c) any combination of the above;

“offeree issuer” means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;

“offeror” means, except in Division 1 of Part 2 of this Instrument, a person that makes a take-over bid, an issuer bid or an offer to acquire;

“offeror’s securities” means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person acting jointly or in concert with the offeror;

“partial take-over bid” means a take-over bid for less than all of the outstanding securities of the class of securities subject to the bid;

“person” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person’s capacity as a trustee, executor, administrator or personal or other legal representative;

“published market” means, with respect to any class of securities, a market in Canada or outside of Canada on which the securities are traded, if the prices at which they have been traded on that market are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“standard trading unit” means

- (a) 1,000 units of a security with a market price of less than \$0.10 per unit,
- (b) 500 units of a security with a market price of \$0.10 or more per unit and less than \$1.00 per unit, and
- (c) 100 units of a security with a market price of \$1.00 or more per unit;

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

“take-over bid” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20% or more of the outstanding securities of that class of securities at the date of the offer to acquire but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders.

Definitions for purposes of the Act

1.2 (1) Except in Saskatchewan, in the Act,

- (a) **“offer to acquire”** has the same meaning as in this Instrument, and
- (b) **“offeror”** has the same meaning as in section 1.1 of this Instrument.

(2) In the definition of **“issuer bid”** in the Act, the prescribed class of issuer bids is that set out in the definition of **“issuer bid”** in this Instrument.

(3) In the definition of **“take-over bid”** in the Act, the prescribed class of take-over bids is that set out in the definition of **“take-over bid”** in this Instrument.

Affiliate

1.3 In this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.4 In this Instrument, a person controls a second person if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless the first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Computation of time

1.5 In this Instrument, a period of days is to be computed as beginning on the day following the event that began the period and ending at 11:59 p.m. on the last day of the period if that day is a business day or at 11:59 p.m. on the next business day if the last day of the period does not fall on a business day.

Expiry of bid

1.6 A take-over bid or an issuer bid expires at the later of

- (a) the end of the period, including any extension, during which securities may be deposited under the bid, and
- (b) the time at which the offeror becomes obligated by the terms of the bid to take up or reject securities deposited under the bid.

Convertible securities

1.7 In this Instrument,

- (a) a security is deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer, and
- (b) a security that is convertible into a security of another class is deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed beneficial ownership

1.8 (1) In this Instrument, in determining the beneficial ownership of securities of an offeror or of any person acting jointly or in concert with the offeror, at any given date, the offeror or the person is deemed to have acquired and to be the beneficial owner of a security, including an unissued security, if the offeror or the person

- (a) is the beneficial owner of a security convertible into the security within 60 days following that date, or
- (b) has a right or obligation permitting or requiring the offeror or the person, whether or not on conditions, to acquire beneficial ownership of the security within 60 days by a single transaction or a series of linked transactions.

(2) The number of outstanding securities of a class in respect of an offer to acquire includes securities that are beneficially owned as determined in accordance with subsection (1).

(3) If 2 or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to the offer or offers to acquire are deemed to be securities subject to the offer to acquire of each offeror for the purpose of determining whether an offeror is making a take-over bid.

(4) In this section, an offeror is not a beneficial owner of securities solely because there is an agreement, commitment or understanding that a security holder will tender the securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

(5) In Québec, for the purposes of this Instrument, a person that beneficially owns securities means a person that owns the securities or that holds securities registered under the name of an intermediary acting as nominee, including a trustee or agent.

Acting jointly or in concert

1.9 (1) In this Instrument, it is a question of fact as to whether a person is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing,

- (a) the following are deemed to be acting jointly or in concert with an offeror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
 - (ii) an affiliate of the offeror;

- (b) the following are presumed to be acting jointly or in concert with an offeror:
- (i) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any person acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer;
 - (ii) an associate of the offeror.

(2) Subsection (1) does not apply to a registered dealer acting solely in an agency capacity for the offeror in connection with a bid and not executing principal transactions in the class of securities subject to the offer to acquire or performing services beyond the customary functions of a registered dealer.

(3) For the purposes of this section, a person is not acting jointly or in concert with an offeror solely because there is an agreement, commitment or understanding that the person will tender securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

Application to direct and indirect offers

1.10 In this Instrument, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities includes a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

Determination of market price

1.11 (1) In this Instrument,

- (a) the market price of a class of securities for which there is a published market, at any date, is an amount equal to the simple average of the closing price of securities of that class for each of the business days on which there was a closing price in the 20 business days preceding that date,
- (b) if a published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the market price of the securities, at any date, is an amount equal to the average of the simple averages of the highest and lowest prices for each of the business days on which there were highest and lowest prices in the 20 business days preceding that date, and
- (c) if there has been trading of securities in a published market for fewer than 10 of the 20 business days preceding the date as of which the market price of the securities is being determined, the market price is the average of the following prices established for each day of the 20 business days preceding that date:
 - (i) the average of the closing bid and ask prices for each day on which there was no trading; and
 - (ii) either the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price, or the average of the highest and lowest prices of securities of that class for each day that there has been trading, if the published market provides only the highest and lowest prices of securities traded on a particular day.

(2) If there is more than one published market for a security, the market price in paragraphs (1)(a), (b) and (c) must be determined as follows:

- (a) if only one of the published markets is in Canada, the market price must be determined solely by reference to that market;
- (b) if there is more than one published market in Canada, the market price must be determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 business days preceding the date as of which the market price is being determined;
- (c) if there is no published market in Canada, the market price must be determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 business days preceding the date as of which the market price is being determined.

(3) Despite subsections (1) and (2) for the purposes of section ~~4.1.4.1~~ and subsection 4.8(3), if an offeror acquires securities on a published market, the market price for those securities is the price of the last standard trading unit of securities of that class purchased, before the acquisition by the offeror, by a person who was not acting jointly or in concert with the offeror.

PART 2: BIDS

Division 1: Restrictions on Acquisitions or Sales

Definition of “offeror”

2.1 In this Division, “offeror” means

- (a) a person making a take-over bid or an issuer bid that is not exempt from Part 2,
- (b) a person acting jointly or in concert with a person referred to in paragraph (a),
- (c) a control person of a person referred to in paragraph (a), or
- (d) a person acting jointly or in concert with a control person referred to in paragraph (c).

Restrictions on acquisitions during take-over bid

2.2 (1) An offeror must not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid or securities convertible into securities of that class otherwise than under the bid on and from the day of the announcement of the offeror’s intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not apply to an agreement between a security holder and the offeror to the effect that the security holder will, in accordance with the terms and conditions of a take-over bid that is not exempt from Part 2, deposit the security holder’s securities under the bid.

(3) Despite subsection (1), an offeror may purchase securities of the class that are subject to a take-over bid and securities convertible into securities of that class beginning on the 3rd business day following the date of the bid until the expiry of the bid if all of the following conditions are satisfied:

- (a) the intention of the offeror,
 - (i) on the date of the bid, is to make purchases and that intention is stated in the bid circular, or
 - (ii) to make purchases changes after the date of the bid and that intention is stated in a news release issued and filed at least one business day prior to making such purchases;
- (b) the number of securities beneficially acquired under this subsection does not exceed 5% of the outstanding securities of that class as at the date of the bid;
- (c) the purchases are made in the normal course on a published market;
- (d) the offeror issues and files a news release immediately after the close of business of the published market on each day on which securities have been purchased under this subsection disclosing the following information:
 - (i) the name of the purchaser;
 - (ii) if the purchaser is a person referred to in paragraph 2.1(b), (c) or (d), the relationship of the purchaser and the offeror;
 - (iii) the number of securities purchased on the day for which the news release is required;
 - (iv) the highest price paid for the securities on the day for which the news release is required;
 - (v) the aggregate number of securities purchased on the published market during the currency of the bid;

- (vi) the average price paid for the securities that were purchased on the published market during the currency of the bid; and
- (vii) the total number of securities owned by the purchaser after giving effect to the purchases that are the subject of the news release;
- (e) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (f) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;
- (g) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid;
- (h) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(4) For the purposes of paragraph 2.2(3)(b), the acquisition of beneficial ownership of securities that are convertible into securities of the class that is subject to the bid shall be deemed to be an acquisition of the securities as converted.

Restrictions on acquisitions during issuer bid

2.3 (1) An offeror must not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to an issuer bid, or securities that are convertible into securities of that class, otherwise than under the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not prevent the offeror from purchasing, redeeming or otherwise acquiring any securities of the class subject to the bid in reliance on an exemption under paragraph 4.6(a), (b) or (c).

Restrictions on acquisitions before take-over bid

2.4 (1) If, within the period of 90 days immediately preceding a take-over bid, an offeror acquired beneficial ownership of securities of the class subject to the bid in a transaction not generally available on identical terms to holders of that class of securities,

- (a) the offeror must offer
 - (i) consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any such prior transaction, or
 - (ii) at least the cash equivalent of that consideration, and
- (b) the offeror must offer to acquire under the bid that percentage of the securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in any such prior transaction was of the total number of securities of that class beneficially owned by that seller at the time of that prior transaction.

(2) Subsection (1) does not apply to a transaction that occurred within 90 days preceding the bid if either of the following conditions are satisfied:

- (a) the transaction is a trade in a security of the issuer that had not been previously issued;
- (b) the transaction is a trade by or on behalf of the issuer in a previously issued security of that issuer that had been redeemed or purchased by, or donated to, that issuer.

Restrictions on acquisitions after bid

2.5 During the period beginning with the expiry of a take-over bid or an issuer bid and ending at the end of the 20th business day after that, whether or not any securities are taken up under the bid, an offeror must not acquire or offer to acquire beneficial ownership of securities of the class that was subject to the bid except by way of a transaction that is generally available to holders of that class of securities on identical terms.

Exception

2.6 Subsection 2.4(1) and section 2.5 do not apply to purchases made by an offeror in the normal course on a published market if all of the following conditions are satisfied:

- (a) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (b) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;
- (c) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid;
- (d) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

Restrictions on sales during bid

2.7 (1) An offeror, except under a take-over bid or an issuer bid, must not sell, or make or enter into an agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, beginning on the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Despite subsection (1), an offeror may, before the expiry of a bid, make or enter into an agreement, commitment or understanding to sell securities that may be taken up by the offeror under the bid, after the expiry of the bid, if the intention to sell is disclosed in the bid circular.

(3) Subsection (1) does not apply to an offeror under an issuer bid in respect of the issue of securities under a dividend plan, dividend reinvestment plan, employee purchase plan or another similar plan.

Division 2: Making a Bid**Duty to make bid to all security holders**

2.8 An offeror must make a take-over bid or an issuer bid to all holders of the class of securities subject to the bid who are in the local jurisdiction by sending the bid to

- (a) each holder of that class of securities whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and
- (b) each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of that class, whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

Commencement of bid

2.9 (1) An offeror must commence a take-over bid by

- (a) publishing an advertisement containing a brief summary of the take-over bid in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English, or
- (b) sending the bid to security holders described in section 2.8.

(2) An offeror must commence an issuer bid by sending the bid to security holders described in section 2.8.

Offeror's circular

2.10 (1) An offeror making a take-over bid or an issuer bid must prepare and send, either as part of the bid or together with the bid, a take-over bid circular or an issuer bid circular, as the case may be, in the following form:

- (a) Form 62-104F1 Take-Over Bid Circular, for a take-over bid; or
- (b) Form 62-104F2 Issuer Bid Circular, for an issuer bid.

(2) An offeror commencing a take-over bid under paragraph 2.9(1)(a) must,

- (a) on or before the date of first publication of the advertisement,
 - (i) deliver the bid and the bid circular to the offeree issuer's principal office,
 - (ii) file the bid, the bid circular and the advertisement,
 - (iii) request from the offeree issuer a list of security holders described in section 2.8, and
- (b) not later than 2 business days after receipt of the list of security holders referred to in subparagraph (a)(iii), send the bid and the bid circular to those security holders.

(3) An offeror commencing a take-over bid under paragraph 2.9(1)(b) must file the bid and the bid circular and deliver them to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that.

(4) An offeror making an issuer bid must file the bid and the bid circular on the day the bid is sent, or as soon as practicable after that.

Change in information

2.11 (1) If, before the expiry of a take-over bid or an issuer bid or after the expiry of a bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in the bid circular or any notice of change or notice of variation that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid, the offeror must promptly

- (a) issue and file a news release, and
- (b) send a notice of the change to every person to whom the bid was required to be sent and whose securities were not taken up before the date of the change.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

(2) Subsection (1) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

(3) In this section, a variation in the terms of a bid does not constitute a change in information.

(4) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

(5) If, under subsection (1), an offeror is required to send a notice of change before the expiry of the initial deposit period

- (a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of change, and
- (b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of change.

Variation of terms

2.12 (1) If there is a variation in the terms of a take-over bid or an issuer bid, including any reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or any extension of the period during which securities may be deposited under the bid, and whether or not that variation results from the exercise of any right contained in the bid, the offeror must promptly

- (a) issue and file a news release, and

- (b) send a notice of variation to every person to whom the bid was required to be sent under section 2.8 and whose securities were not taken up before the date of the variation.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

(2) A notice of variation must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

(3) If there is a variation in the terms of a take-over bid or an issuer bid, the period during which securities may be deposited under the bid must not expire before 10 days after the date of the notice of variation.

(3.1) If, under subsection (1), an offeror is required to send a notice of variation before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of variation, and

(b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of variation.

(4) Subsections (1) ~~and~~ (3) and (3.1) do not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid, other than an extension in respect of the mandatory 10-day extension period, resulting from the waiver where the consideration offered for the securities consists solely of cash, but in that case the offeror must promptly issue and file a news release announcing the waiver.

~~(5) An offeror must not make a variation in the terms of a take-over bid or an issuer bid, other than a variation that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, must not be made~~ after the expiry of the period, including any extension of the period, during which the securities may be deposited under the bid.

(6) An offeror must not make a variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1.

Filing and sending notice of change or notice of variation

2.13 A notice of change or notice of variation in respect of a take-over bid or an issuer bid must be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office, on the day the notice of change or notice of variation is sent to security holders of the offeree issuer, or as soon as practicable after that.

Change or variation in advertised take-over bid

2.14 (1) If a change or variation occurs to a take-over bid that was commenced by means of an advertisement, and if the offeror has complied with paragraph 2.10(2)(a) but has not yet sent the bid and the bid circular under paragraph 2.10(2)(b), the offeror must

- (a) publish an advertisement that contains a brief summary of the change or variation in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English,
- (b) concurrently with the date of first publication of the advertisement,
- (i) file the advertisement, and
- (ii) file and deliver a notice of change or notice of variation to the offeree issuer's principal office, and
- (c) subsequently send the bid, the bid circular and the notice of change or notice of variation to the security holders of the offeree issuer before the expiration of the period set out in paragraph 2.10(2)(b).

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or notice of variation is not required to be filed and delivered under section 2.13.

Consent of expert – bid circular

2.15 (1) In this section and section 2.21, an expert includes a notary in Québec, solicitor, auditor, accountant, engineer, geologist or appraiser or any other person whose profession or business gives authority to a report, valuation, statement or opinion made by that person.

(2) If a report, valuation, statement or opinion of an expert is included in or accompanies a bid circular or any notice of change or notice of variation to the circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the bid circular, notice of change or notice of variation.

Delivery and date of bid documents

2.16 (1) A take-over bid, an issuer bid, a bid circular and every notice of change or notice of variation must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Except for a take-over bid commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

(3) If a take-over bid is commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation is deemed to have been dated as of the date of first publication of the relevant advertisement.

Division 3: Offeree Issuer's Obligations**Duty to prepare and send directors' circular**

2.17 (1) If a take-over bid has been made, the board of directors of the offeree issuer must prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person to whom the bid was required to be sent under section 2.8.

(2) The board of directors of the offeree issuer must evaluate the terms of the take-over bid and, in the directors' circular,

- (a) must recommend to security holders that they accept or reject the bid and state the reasons for the recommendation,
- (b) must advise security holders that the board is unable to make, or is not making, a recommendation and state the reasons for being unable to make a recommendation or for not making a recommendation, or
- (c) must advise security holders that the board is considering whether to make a recommendation to accept or reject the bid, must state the reasons for not making a recommendation in the directors' circular and may advise security holders that they should not deposit their securities under the bid until they receive further communication from the board of directors in accordance with paragraph (a) or (b).

(3) If paragraph (2)(c) applies, the board of directors must communicate to security holders a recommendation to accept or reject the bid or the decision that it is unable to make, or is not making, a recommendation, together with the reasons for the recommendation or decision, at least 7 days before the scheduled expiry of the initial deposit period during which securities may be deposited under the bid.

(4) A directors' circular must be in the form of Form 62-104F3 Directors' Circular.

Notice of change

2.18 (1) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a directors' circular or in any notice of change to the directors' circular that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, the board of directors of the offeree issuer must promptly issue and file a news release relating to the change and send a notice of the change to every person to whom the take-over bid was required to be sent disclosing the nature and substance of the change.

(2) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Filing directors' circular or notice of change

2.19 The board of directors of the offeree issuer must concurrently file the directors' circular or a notice of change in relation to it and deliver it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that date.

Individual director's or officer's circular

2.20 (1) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a separate director's or officer's circular to every person to whom the take-over bid was required to be sent under section 2.8.

(2) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a director's or officer's circular or any notice of change in relation to it that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, other than a change that is not within the control of the director or officer, as the case may be, that director or officer must promptly send a notice of change to every person to whom the take-over bid was required to be sent under section 2.8.

(3) A director's or officer's circular must be in the form of Form 62-104F4 Director's or Officer's Circular.

(4) A director's or officer's obligation to send a circular under subsection (1) or to send a notice of change under subsection (2) may be satisfied by sending the circular or the notice of change, as the case may be, to the board of directors of the offeree issuer.

(5) If a director or officer sends to the board of directors of the offeree issuer a circular under subsection (1) or a notice of change under subsection (2), the board, at the offeree issuer's expense, must promptly send a copy of the circular or notice to every person to whom the take-over bid was required to be sent under section 2.8.

(6) The board of directors of the offeree issuer or the individual director or officer, as the case may be, must concurrently file the director's or officer's circular or a notice of change in relation to it and send it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that.

(7) A notice of change in relation to a director's or officer's circular must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Consent of expert – directors' circular/individual director's or officer's circular

2.21 If a report, valuation, statement or opinion of an expert is included in or accompanies a directors' circular, an individual director's or officer's circular or any notice of change to either circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the circular or notice.

Delivery and date of offeree issuer's documents

2.22 (1) A directors' circular, an individual director's or officer's circular and every notice of change must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Any circular or notice sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

Division 4: Offeror's Obligations

Consideration

2.23 (1) If a take-over bid or an issuer bid is made, all holders of the same class of securities must be offered identical consideration.

(2) Subsection (1) does not prohibit an offeror from offering an identical choice of consideration to all holders of the same class of securities.

(3) If a variation in the terms of a take-over bid or an issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror must pay that increased consideration to each person whose securities are taken up under the bid, whether or not the securities were taken up by the offeror before the variation of the bid.

Prohibition against collateral agreements

2.24 If a person makes or intends to make a take-over bid or an issuer bid, the person or any person acting jointly or in concert with that person must not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.

Collateral agreements – exception

2.25 (1) Section 2.24 does not apply to an employment compensation arrangement, severance arrangement or other employment benefit arrangement that provides

- (a) an enhancement of employee benefits resulting from participation by the security holder of the offeree issuer in a group plan, other than an incentive plan, for employees of a successor to the business of the offeree issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the offeree issuer who hold positions of a similar nature to the position held by the security holder, or
- (b) a benefit not described in paragraph (a) that is received solely in connection with the security holder's services as an employee, director or consultant of the offeree issuer, of an affiliated entity of the offeree issuer, or of a successor to the business of the offeree issuer, if
 - (i) at the time the bid is publicly announced, the security holder and its associates beneficially own or exercise control or direction over less than 1% of the outstanding securities of each class of securities of the offeree issuer subject to the bid, or
 - (ii) an independent committee of directors of the offeree issuer, acting in good faith, has determined that
 - (A) the value of the benefit, net of any offsetting costs to the security holder, is less than 5% of the amount referred to in paragraph 3(a), or
 - (B) the security holder is providing at least equivalent value in exchange for the benefit.

(2) In order to rely on an exception under paragraph (1)(b) the following conditions must be satisfied:

- (a) the benefit is not conferred for the purpose, in whole or in part, of increasing the amount of the consideration paid to the security holder for securities deposited under the bid or providing an incentive to deposit under the bid;
- (b) the conferring of the benefit is not, by its terms, conditional on the security holder supporting the bid in any manner; and
- (c) full particulars of the benefit are disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(3) In order to rely on an exception under subparagraph 1(b)(ii) the following conditions must be satisfied:

- (a) the security holder receiving the benefit has disclosed to the independent committee the amount of consideration that the security holder expects it will be beneficially entitled to receive under the terms of the bid in exchange for the securities beneficially owned by the security holder; and
- (b) the determination of the independent committee under subparagraph 1(b)(ii) is disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(4) In this section, in determining the beneficial ownership of securities of a holder at a given date, any security or right or obligation permitting or requiring the security holder or any person acting jointly or in concert with the security holder, whether or not on conditions, to acquire a security, including an unissued security, of a particular class within 60 days by a single transaction or a series of linked transactions is deemed to be a security of a particular class.

Proportionate take up and payment – issuer bids

2.26 (1) ~~If a take-over bid or~~ an issuer bid is made for less than all of the class of securities subject to the bid and a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) Subsection (1) does not prohibit an offeror from acquiring securities under the terms of an issuer bid that, if not acquired, would constitute less than a standard trading unit for the security holder.

(3) Subsection (1) does not apply to securities deposited under the terms of an issuer bid by security holders who

- (a) are entitled to elect a minimum price per security, within a range of prices, at which they are willing to sell their securities under the bid, and
- (b) elect a minimum price which is higher than the price that the offeror pays for securities under the bid.

Proportionate take up and payment – take-over bids

2.26.1 (1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(4~~2~~) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction.

Financing arrangements

2.27 (1) If a take-over bid or an issuer bid provides that the consideration for the securities deposited under the bid is to be paid in cash or partly in cash, the offeror must make adequate arrangements before the bid to ensure that the required funds are available to make full payment for the securities that the offeror has offered to acquire.

(2) The financing arrangements required to be made under subsection (1) may be subject to conditions if, at the time the take-over bid or the issuer bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for the securities deposited under the bid due to a financing condition not being satisfied.

Division 5: Bid Mechanics

Minimum deposit period – issuer bids

2.28 An offeror must allow securities to be deposited under ~~a take-over bid or~~ an issuer bid for a minimum deposit period of at least 35 days from the date of the bid.

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 105 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

- (a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the deposit period news release referred to in subsection (1) and the bid has yet to expire;
- (b) the offeror, after the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of expiry of the take-over bid referred to in subsection (1).
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

- (a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the news release and the bid has yet to expire;
- (b) the offeror, after the issuance of the news release, commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of completion or abandonment of the alternative transaction.
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a).

ProhibitionRestriction on take up – issuer bids

2.29 An offeror must not take up securities deposited under ~~a take-over bid or~~ an issuer bid until the expiration of 35 days from the date of the bid.

Restriction on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following apply:

- (a) a period of 105 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, has elapsed from the date of the bid;
- (b) all the terms and conditions of the bid have been complied with or waived;
- (c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

Withdrawal of securities

2.30 (1) A security holder may withdraw securities deposited under a take-over bid or an issuer bid

- (a) at any time before the securities have been taken up by the offeror,
- (b) at any time before the expiration of 10 days from the date of a notice of change under section 2.11 or a notice of variation under section 2.12, or
- (c) if the securities have not been paid for by the offeror within 3 business days after the securities have been taken up.

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder must not withdraw securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

- (a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and
- (b) ending at the time the offeror becomes obligated under either subsection 2.32.1(7) or (8) to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6).

(2) The right of withdrawal under ~~Despite paragraph (1)(b) does not apply,~~ a security holder must not withdraw securities deposited if

- (a) the securities have been taken up by the offeror before the date of the notice of change or notice of variation,
- (a.1) in the case of a partial take-over bid, the securities were deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or
- (b) ~~one or both~~ any of the following ~~circumstances occur~~ apply:
 - (i) there is a variation in the terms of ~~the~~ a take-over bid or issuer bid consisting solely of an increase in consideration offered for the securities and an extension of the time for deposit to not later than 10 days after the date of the notice of variation;
 - (ii) there is a variation in the terms of ~~the~~ a take-over bid or issuer bid consisting solely of the waiver of one or more of the conditions of the bid where the consideration offered for the securities subject to the take-over bid or the issuer bid consists solely of cash;
 - (iii) in the case of a take-over bid, there is a variation in the terms after the expiry of the initial deposit period consisting of either an increase in the consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation.

(3) The withdrawal of any securities under subsection (1) is made by sending a written notice to the depository designated in the bid circular and becomes effective on its receipt by the depository.

(4) If notice is given in accordance with subsection (3), the offeror must promptly return the securities to the security holder.

Effect of market purchases

2.31 If an offeror purchases securities ~~as permitted by~~ under subsection 2.2(3), ~~these~~ the purchased securities must not be counted in determining whether ~~a condition as to the minimum number of securities to be deposited under a take-over bid has been fulfilled, but must~~ the minimum tender requirement in paragraph 2.29.1(c) is satisfied and the purchase does not reduce the number of securities the offeror is bound to take up under the take-over bid.

Mandatory 10-day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a take-over bid pursuant to subsection 2.32.1(1), the offeror must

- (a) extend the period during which securities may be deposited under the bid for a period of at least 10 days, and
- (b) promptly issue and file a news release disclosing the following:
 - (i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,
 - (ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,
 - (iii) that the period during which securities may be deposited under the bid has been extended for the mandatory 10-day extension period, and

(iv) in the case of a take-over bid that

(A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible, and in any event not later than 3 business days after the securities are taken up, or

(B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event will take up the deposited securities not later than one business day after the expiry of the mandatory 10-day extension period and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up.

Time limit on extension – partial take-over bids

2.31.2 In the case of a partial take-over bid,

(a) the mandatory 10-day extension period must not exceed 10 days, and

(b) the bid must not be extended after the expiry of the mandatory 10-day extension period.

Obligation to take up and pay for deposited securities – issuer bids

2.32 (1) If all the terms and conditions of ~~a take-over bid~~ or an issuer bid have been complied with or waived, the offeror must take up and pay for securities deposited under the bid not later than 10 days after the expiry of the bid or at the time required by subsection (2) or (3), whichever is earliest.

(2) An offeror must pay for any securities taken up under ~~a take-over bid~~ or an issuer bid as soon as possible, and in any event not later than 3 business days after ~~the~~ securities deposited under the bid are taken up.

(3) Securities deposited under ~~a take-over bid~~ or an issuer bid subsequent to the date on which the offeror first takes up securities deposited under the bid must be taken up and paid for by the offeror not later than 10 days after the deposit of ~~the~~ securities.

(4) An offeror ~~may~~^{must} not extend its ~~take-over bid~~ or issuer bid if all the terms and conditions of the bid have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsections (3) and (4), if ~~a take-over bid~~ or an issuer bid is made for less than all of the class of securities subject to the bid, an offeror is ~~only~~ required to take up, by the times specified in those subsections, only the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26 at the expiry of the bid.

(6) Despite subsection (4), if the offeror waives any terms or conditions of ~~a take-over bid~~ or an issuer bid and extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

Obligation to take up and pay for deposited securities – take-over bids

2.32.1 (1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period, all of the following apply:

(a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed;

(b) all the terms and conditions of the bid have been complied with or waived;

(c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10-day extension period, or an extension period made after the mandatory 10-day extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid beyond the expiry of the mandatory 10-day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the offeror must extend the bid without the offeror first taking up the securities which are subject to the rights of withdrawal.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is required to take up, by the time specified in that subsection, only the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the mandatory 10-day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10-day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

Return of deposited securities

2.33 If, following the expiry of a take-over bid or an issuer bid, an offeror knows that it will not take up securities deposited under the bid, the offeror must promptly issue and file a news release to that effect and return the securities to the security holders.

News release on expiry of bid

2.34 If all the terms and conditions of a take-over bid or an issuer bid have been complied with or waived, the offeror must issue and file a news release to that effect promptly after the expiry of the bid, and the news release must disclose

- (a) the approximate number of securities deposited, and
- (b) the approximate number that will be taken up.

PART 3: GENERAL

[...]

PART 6: EXEMPTIONS

Exemption – general

6.1 (1) The regulator or the securities regulatory authority may ~~grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.~~

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction, ~~grant an exemption to this Instrument.~~

Exemption – collateral benefit

6.2 (1) The regulator or the securities regulatory authority may decide for the purposes of section 2.24 that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to a selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into despite that section.

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision.

PART 7: TRANSITION AND COMING INTO FORCE**Transition**

7.1 The take-over bid or issuer bid provisions in securities legislation that were in force immediately before ~~the effective date of this Instrument, May 9, 2016,~~ continue to apply in respect of

- (a) ~~every take-over bid and issuer bid commenced before the effective date of this Instrument, May 9, 2016,~~
- (b) ~~any take-over bid in respect of the securities of an offeree issuer subject to a take-over bid referred to in paragraph (a) commenced on or subsequent to May 9, 2016 and prior to the date of the expiry of a take-over bid referred to in paragraph (a), and~~
- (c) ~~any take-over bid in respect of the securities of an issuer that issued a news release before May 9, 2016 announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, commenced on or subsequent to May 9, 2016 and prior to the date of completion or abandonment of the alternative transaction.~~

Coming into force

7.2 ~~This~~ Except in Ontario, this Instrument comes into force on February 1, 2008. In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX E

CHANGES TO NATIONAL POLICY 62-203 TAKE-OVER BIDS AND ISSUER BIDS

1. **National Policy 62-203 Take-Over Bids and Issuer Bids is changed by this document.**
2. **Section 1.1 is changed**
 - (a) **by replacing** “Multilateral” **with** “National”,
 - (b) **by deleting** “, except Ontario, and has been implemented as a rule or regulation in all jurisdictions, except Ontario. Part XX of the *Securities Act* (Ontario) (the Ontario Act) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (the Ontario Rule) govern take-over bids and issuer bids in Ontario only.”, **and**
 - (c) **by replacing** “This Policy, the Instrument, the Ontario Act and the Ontario Rule are collectively” **with** “This Policy and the Instrument are together”.
3. **Section 2.1 is changed by adding** “.” **after** “objectives”.
4. **Section 2.2 is changed by deleting, in the first paragraph,** “in section 1.1 of the Instrument and subsection 89(1) of the Ontario Act” **and** “and subsection 89(1) of the Ontario Act”.
5. **Section 2.7 is changed by deleting** “or clause 4.1(1)(b)(ii)(B) of the Ontario Rule”.
6. **The following sections are added:**
 - 2.10 **Take-over bid deposit period** – The Bid Regime requires all non-exempt take-over bids to remain open for a minimum deposit period of 105 days (section 2.28.1 of the Instrument), except in the following circumstances:
 - (a) the offeree issuer states in a news release a shorter deposit period for a bid of not less than 35 days (section 2.28.2 of the Instrument); or
 - (b) the issuer issues a news release that it intends to effect a specified alternative transaction (section 2.28.3 of the Instrument).

Where a shorter minimum deposit period applies, an offeror that has not yet commenced its take-over bid can avail itself of the shorter minimum deposit period by establishing an expiry date for the initial deposit period based on the number of days specified for the bid referred to in the deposit period news release. In the case of an alternative transaction, section 2.28.3 of the Instrument permits an offeror to establish a minimum initial deposit period of at least 35 days. This provision applies regardless of the length of time that may be required to complete the alternative transaction.

If an offeror has already commenced a take-over bid when a deposit period news release is issued or an alternative transaction is announced, sections 2.28.2 and 2.28.3 of the Instrument do not require the offeror to shorten the deposit period for its bid, nor do they apply to automatically shorten the initial deposit period of its bid. To avail itself of the permitted shorter initial deposit period, the offeror must vary its take-over bid in accordance with section 2.12 of the Instrument to reflect the earlier expiry date for the bid. As a consequence, the offeror must allow securities to be deposited under its bid for at least 10 days after the notice of variation even if the offeror’s take-over bid would otherwise have already satisfied the shorter minimum deposit period.

- 2.11 **Deposit period news release** – A “deposit period news release” is defined, in part, as a news release issued by an offeree issuer in respect of a “proposed or commenced” take-over bid. A take-over bid is “proposed” if a person publicly announces that it intends to make a take-over bid for the securities of an offeree issuer. An anticipated but unannounced take-over bid or possible future take-over bid would not constitute a “proposed” take-over bid within the meaning of this definition.

A deposit period news release will state an initial deposit period for a take-over bid of not more than 105 days and not less than 35 days. A deposit period news release must describe the minimum deposit period by referring to a number of days from the date of the bid and not to specific calendar dates in order to facilitate the generic application of the shorter minimum deposit period to multiple take-over bids.

- 2.12 Multiple deposit period news releases** – The Bid Regime does not restrict an offeree issuer from issuing multiple deposit period news releases in respect of a take-over bid or contemporaneous bids. While likely rare, we anticipate that there may be circumstances where an offeree issuer determines to further shorten a previously stated minimum initial deposit period for a take-over bid or determines to state a shorter initial minimum deposit period for a take-over bid after it had previously stated an initial minimum deposit period for another take-over bid. In the event that an offeree issuer issues multiple deposit period news releases, the provisions in section 2.28.2 of the Instrument should be interpreted such that the shortest initial minimum deposit period stated in a deposit period news release applies to all take-over bids that are subject to section 2.28.2 of the Instrument.
- 2.13 Alternative transaction** – The Bid Regime includes a definition for an “alternative transaction” that is based, with certain modifications, principally on the definition of “business combination” in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*. This definition is intended to encompass transactions agreed to or initiated by the issuer that could result in the acquisition of the issuer or the business of the issuer as an alternative to doing so by means of a take-over bid.
- 2.14 Alternative transaction – time of agreement** – Section 2.28.3 of the Instrument provides that, in certain circumstances, the initial deposit period for a bid must be at least 35 days from the date of the bid if an issuer issues a news release announcing that it “intends to effect an alternative transaction, whether pursuant to an agreement or otherwise”. An agreement to enter into an alternative transaction should be interpreted as having occurred when the issuer first makes a legally binding commitment to proceed with the alternative transaction, subject to conditions such as security holder approval.

Where an issuer does not technically negotiate an alternative transaction with another party, such as in the case of a share consolidation, a determination to effect the alternative transaction should be interpreted as having occurred when the issuer’s board of directors decides to proceed with the alternative transaction, subject to conditions.

- 2.15 Alternative transaction – reliance on issuer news release** – Section 2.28.3 of the Instrument provides for the reduction of the minimum initial deposit period for a take-over bid to 35 days if an issuer issues a news release announcing that it intends to effect an alternative transaction. Section 2.28.3 applies in respect of an offeror’s take-over bid, such that an offeror should reasonably determine whether an issuer’s announced transaction is an “alternative transaction” before either, as the case may be, reducing the initial deposit period of its outstanding take-over bid to not less than 35 days or commencing a take-over bid for the issuer with an initial deposit period of not less than 35 days.
- 2.16 Change in information or variation of terms** – Subsections 2.11(5) and 2.12(3.1) of the Instrument provide that the initial deposit period for a take-over bid must not expire before 10 days after the date of a notice of change or notice of variation, respectively. If an offeror is required to send a notice of change or a notice of variation in circumstances where the initial deposit period would expire less than 10 days from the date of the notice then the offeror would be obliged to further extend the initial deposit period to ensure that at least 10 days have elapsed before the expiry of the initial deposit period.
- 2.17 Partial take-over bids** – The Bid Regime includes specific requirements for partial take-over bids, including that an offeror is required to take up securities deposited on a proportionate or *pro rata* basis where a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire. The Bid Regime exempts an offeror making a partial take-over bid from the general obligation to immediately take up all deposited securities if, at the expiry of the initial deposit period, the specified bid conditions in subsection 2.32.1(1) of the Instrument are satisfied. Instead, subsection 2.32.1(6) of the Instrument provides that the offeror is required to take up at the expiry of the initial deposit period only the maximum number of securities that it can without contravening the *pro rata* requirement. An offeror would therefore make the determination of the maximum number of securities it can take up assuming that all other securities subject to the bid will be deposited during the mandatory 10-day extension period.

Subsection 2.32.1(7) of the Instrument further requires that an offeror making a partial take-over bid must take up any securities deposited during the initial deposit period and not already taken up by it in reliance on subsection s. 2.32.1(6), and securities deposited during the mandatory 10-day extension period, on a *pro rata* basis and not later than one business day after expiry of the mandatory 10-day extension period. This *pro rata* determination would take into account the fact that a portion of the securities deposited in the initial deposit period has already been taken up by the offeror.

The following are illustrative examples of how the proportionate take-up provisions in the Bid Regime would apply to partial take-over bids in different circumstances.

Partial take-over bid scenario	Offeree shares deposited as at expiry of initial deposit period (all other conditions satisfied)	Maximum number of offeree shares taken up <i>pro rata</i> by offeror at expiry of initial deposit period	Additional offeree shares deposited during mandatory 10-day extension period	Total offeree shares taken up at expiry of mandatory 10-day extension period
<p>Bid for 3,000 offeree shares (30% of 10,000 issued and outstanding offeree shares)</p> <p>Offeror does not own offeree shares at commencement of bid and does not acquire offeree shares during the bid.</p>	<p>6,000 (60% of the 10,000 offeree shares subject to the bid)</p> <p>(minimum 50% tender is required to meet minimum tender requirement in s. 2.29.1(c))</p>	<p>1,800 (60% of 3,000 offeree shares bid for, or 30% of 6,000 shares deposited)</p> <p>Offeror cannot take-up more than 60% of the 3,000 shares it bid for (30% of deposited shares) to allow for possibility of additional deposit of all 4,000 (40%) remaining shares subject to the bid during mandatory 10-day extension period.</p>	<p>2,000 (20% of the 10,000 offeree shares subject to the bid)</p>	<p>3,000 (30% of 10,000 issued and outstanding offeree shares)</p> <p><i>Summary</i></p> <p>A total of 8,000 (80%) of the offeree shares subject to the bid deposited as at expiry of the mandatory 10-day extension period (6,000 as at expiry of initial deposit period plus 2,000 deposited during mandatory 10-day extension period).</p> <p>Proration factor: $3,000 / 8,000$ (number of shares sought / number of shares tendered) = approx. 0.375. The offeror will take up and pay for 37.5% of shares deposited by each shareholder, taking into account any shares already taken up at expiry of initial deposit period.</p>
<p>Bid for 3,000 offeree shares (30% of 10,000 issued and outstanding offeree shares) in addition to shares held by offeror</p> <p>Offeror owns 1,000 (10%) of offeree shares at commencement of bid and does not acquire offeree shares during the bid.</p>	<p>6,000 (66$\frac{2}{3}$% of the 9,000 offeree shares subject to the bid)</p> <p>(minimum 50% tender of the 9,000 offeree shares not held by offeror (or 4,500 shares) is required to meet minimum tender requirement in s. 2.29.1(c))</p>	<p>2,000 (66$\frac{2}{3}$% of 3,000 offeree shares bid for, or 33$\frac{1}{3}$% of 6,000 shares deposited)</p> <p>Offeror cannot take-up more than 66$\frac{2}{3}$% of the 3,000 offeree shares it bid for to allow for possibility of additional deposit of all 3,000 (33$\frac{1}{3}$%) remaining shares subject to the bid during mandatory 10-day extension period.</p>	<p>2,000 (approx. 22% of the 9,000 offeree shares subject to the bid)</p>	<p>3,000 (30% of 10,000 issued and outstanding offeree shares)</p> <p><i>Summary</i></p> <p>A total of 8,000 (80%) of offeree shares subject to the bid deposited as at expiry of the mandatory 10-day extension period (6,000 as at expiry of initial deposit period plus 2,000 deposited during mandatory 10-day extension period).</p> <p>Pro ration factor: $3,000 / 8,000$ (number of shares sought / number of shares deposited) = approx. 0.375. The offeror will take up and pay for 37.5% of shares deposited by each shareholder, taking into account any shares already taken up at expiry of initial deposit period.</p>

7. Except in Ontario, these changes become effective on May 9, 2016. In Ontario, these changes become effective on the later of the following:

- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX F

AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 PASSPORT SYSTEM

1. **Multilateral Instrument 11-102 Passport System is amended by this Instrument.**
2. **Appendix D is amended by replacing the following:**

Take-over bids and issuer bid requirements (TOB/IB) – Restrictions on acquisitions during take-over bid	s. 2.2(1) of MI 62-104	s. 93.1(1)
TOB/IB – Restrictions on acquisitions during issuer bid	s. 2.3(1) of MI 62-104	s. 93.1(4)
TOB/IB – Restrictions on acquisitions before take-over bid	s. 2.4(1) of MI 62-104	s. 93.2(1)
TOB/IB – Restrictions on acquisitions after bid	s. 2.5 of MI 62-104	s. 93.3(1)
TOB/IB – Restrictions on sales during formal bid	s. 2.7(1) of MI 62-104	s. 97.3(1)
TOB/IB – Duty to make bid to all security holders	s. 2.8 of MI 62-104	s. 94
TOB/IB – Commencement of bid	s. 2.9 of MI 62-104	s. 94.1(1) and (2)
TOB/IB – Offeror's circular	s. 2.10 of MI 62-104	s. 94.2(1) – (4) of <i>Securities Act</i> and s. 3.1 of OSC Rule 62-504
TOB/IB – Change in information	s. 2.11(1) of MI 62-104	s. 94.3(1)
TOB/IB – Notice of change	s. 2.11(4) of MI 62-104	s. 94.3(4) of <i>Securities Act</i> and s. 3.4 of OSC Rule 62-504
TOB/IB – Variation of terms	s. 2.12(1) of MI 62-104	s. 94.4(1)
TOB/IB – Notice of variation	s. 2.12(2) of MI 62-104	s. 94.4(2) of <i>Securities Act</i> and s. 3.4 of OSC Rule 62-504
TOB/IB – Expiry date of bid if notice of variation	s. 2.12(3) of MI 62-104	s. 94.4(3)
TOB/IB – No variation after expiry	s. 2.12(5) of MI 62-104	s. 94.4(5)
TOB/IB – Filing and sending notice of change or notice of variation	s. 2.13 of MI 62-104	s. 94.5
TOB/IB – Change or variation in advertised take-over bid	s. 2.14(1) of MI 62-104	s. 94.6(1)
TOB/IB – Consent of expert – bid circular	s. 2.15(2) of MI 62-104	s. 94.7(1)

TOB/IB – Delivery and date of bid documents	s. 2.16(1) of MI 62-104	s. 94.8(1)
TOB/IB – Duty to prepare and send directors' circular	s. 2.17 of MI 62-104	s. 95(1) – (4) of <i>Securities Act</i> and s. 3.2 of OSC Rule 62-504
TOB/IB – Notice of change	s. 2.18 of MI 62-104	s. 95.1(1) and (2) of <i>Securities Act</i> and s. 3.4 of OSC Rule 62-504
TOB/IB – Filing directors' circular or notice of change	s. 2.19 of MI 62-104	s. 95.2
TOB/IB – Change in information in director's or officer's circular or notice of change	s. 2.20(2) of MI 62-104	s. 96(2)
TOB/IB – Form of director's or officer's circular	s. 2.20(3) of MI 62-104	s. 96(3) of <i>Securities Act</i> and s. 3.3 of OSC Rule 62-504
TOB/IB – Send director's or officer's circular or notice of change to securityholders	s. 2.20(5) of MI 62-104	s. 96(5)
TOB/IB – File and send to offeror director's or officer's circular or notice of change	s. 2.20(6) of MI 62-104	s. 96(6)
TOB/IB – Form of notice of change for director's or officer's circular	s. 2.20(7) of MI 62-104	s. 96(7) of <i>Securities Act</i> and s. 3.4 of OSC Rule 62-504
TOB/IB – Consent of expert, directors' circular, etc.	s. 2.21 of MI 62-104	s. 96.1
TOB/IB – Delivery and date of offeree issuer's documents	s. 2.22(1) of MI 62-104	s. 96.2(1)
TOB/IB – Consideration	s. 2.23(1) of MI 62-104	s. 97(1)
TOB/IB – Variation of consideration	s. 2.23(3) of MI 62-104	s. 97(3)
TOB/IB – Prohibition against collateral agreements	s. 2.24 of MI 62-104	s. 97.1(1)
TOB/IB – Proportionate take up and payment	s. 2.26(1) of MI 62-104	s. 97.2(1)
TOB/IB – Financing arrangements	s. 2.27(1) of MI 62-104	s. 97.3(1)
TOB/IB – Minimum deposit period	s. 2.28 of MI 62-104	s. 98(1)
TOB/IB – Prohibition on take up	s. 2.29 of MI 62-104	s. 98(2)
TOB/IB – Obligation to take up and pay for deposited securities	s. 2.32 of MI 62-104	s. 98.3

TOB/IB – Return of deposited securities	s. 2.33 of MI 62-104	s. 98.5
TOB/IB – News release on expiry of bid	s. 2.34 of MI 62-104	s. 98.6
TOB/IB – Language of bid documents	s. 3.1 of MI 62-104	n/a
TOB/IB – Filing of documents by offeror	s. 3.2(1) of MI 62-104	s. 98.7 of <i>Securities Act</i> and s. 5.1(1) of OSC Rule 62-504
TOB/IB – Filing of documents by offeree issuer	s. 3.2(2) of MI 62-104	s. 5.1(2) of OSC Rule 62-504
TOB/IB – Time period for filing	s. 3.2(3) of MI 62-104	s. 5.1(3) of OSC Rule 62-504
TOB/IB – Filing of subsequent agreement	s. 3.2(4) of MI 62-104	s. 5.1(4) of OSC Rule 62-504
TOB/IB – Certification of bid circulars	s. 3.3(1) of MI 62-104	s. 99(1)
TOB/IB – All directors and officers sign	s. 3.3(2) of MI 62-104	s. 99(2)
TOB/IB – Certification of directors' circular	s. 3.3(3) of MI 62-104	s. 99(3)
TOB/IB – Certification of individual director's or officer's circular	s. 3.3(4) of MI 62-104	s. 99(4)
TOB/IB – Obligation to provide security holder list	s. 3.4(1) of MI 62-104	s. 99.1(1)
TOB/IB – Application of <i>Canada Business Corporations Act</i>	s. 3.4(2) of MI 62-104	s. 99.1(2)
TOB/IB – Early Warning	s. 5.2 of MI 62-104	s. 102.1(1) – (4) of <i>Securities Act</i> and s. 7.1 of OSC Rule 62-504
TOB/IB – Acquisitions during bid	s. 5.3 of MI 62-104	s. 102.2(1) and (2) of <i>Securities Act</i> and s. 7.2(1) of OSC Rule 62-504
TOB/IB – Copies of news release and report	s. 5.5 of MI 62-104	s. 7.2(3) of OSC Rule 62-504

with the following:

Take-over bid and issuer bid requirements	NI 62-104
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3. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX G**AMENDMENTS TO
MULTILATERAL INSTRUMENT 13-102 SYSTEM FEES FOR SEDAR AND NRD**

1. ***Multilateral Instrument 13-102 System Fees for SEDAR and NRD is amended by this Instrument.***
2. ***Subsection 1(1) is amended***
 - (a) ***by replacing the definition of “issuer bid” with the following:***

“issuer bid” means an issuer bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies; ***and***
 - (b) ***by replacing the definition of “take-over bid” with the following:***

“take-over bid” means a take-over bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies..
3. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX H**AMENDMENTS TO
NATIONAL INSTRUMENT 43-101 STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS**

1. ***National Instrument 43-101 Standards of Disclosure for Mineral Projects is amended by this Instrument.***
2. ***Section 1.1 is amended by adding the following definition:***

“initial deposit period” has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*..
3. ***Subparagraph 4.2(5)(a)(ii) is amended by replacing “expiry of the take-over bid” with “the expiry of the initial deposit period”.***
4. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX I**AMENDMENTS TO
MULTILATERAL INSTRUMENT 51-105 ISSUERS QUOTED
IN THE U.S. OVER-THE-COUNTER MARKETS**

1. ***Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.***
2. ***Section 16 is amended by replacing “Multilateral” with “National”.***
3. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX J**CHANGES TO
COMPANION POLICY 55-104CP INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS**

1. *Companion Policy 55-104CP Insider Reporting Requirements and Exemptions is changed by this document.*
2. *Subsection 3.2(3) is changed*
 - (a) *by replacing “Multilateral” with “National”, and*
 - (b) *by deleting “and in Ontario, subsection 90(1) of the Ontario Act”.*
3. Except in Ontario, these changes become effective on May 9, 2016. In Ontario, these changes become effective on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX K**AMENDMENTS TO
MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS**

1. **Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is amended by this Instrument.**
2. **Section 1.1 is amended**
 - (a) **by replacing “Multilateral” with “National” and deleting “**, and in Ontario, a formal take-over bid or formal issuer bid as defined in section 89(1) of the *Securities Act*” **in the definition of “bid”,**
 - (b) **by replacing “Multilateral” with “National” and deleting “**, and in Ontario, section 89(1) of the *Securities Act*” **in the definition of “issuer bid”,**
 - (c) **by replacing “Multilateral” with “National” and deleting “and in Ontario, section 91 of the Securities Act,” in the definition of “joint actors”,**
 - (d) **by replacing “Multilateral” with “National” wherever the expression occurs, deleting “and in Ontario, subsections 1.3 (1), (2) and (3) of Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids,” and deleting “and in Ontario, subsections 1.3 (1), (2) and (3) of OSC Rule 62-504 Take-Over Bids and Issuer Bids,” in the definition of “market capitalization”,**
 - (e) **by replacing “Multilateral” with “National” and deleting “**, and in Ontario, section 89(1) of the *Securities Act*” **in the definition of “offeree issuer”,**
 - (f) **by replacing “Multilateral” with “National” and deleting “**, and in Ontario, section 89(1) of the *Securities Act*” **in the definition of “offeror”, and**
 - (g) **by replacing “Multilateral” with “National” and deleting “**, and in Ontario, section 89(1) of the *Securities Act*” **in the definition of “take-over bid”.**
3. **Subsection 1.6(2) is amended**
 - (a) **by replacing “the following provisions apply:” with “the provisions of section 1.8 of National Instrument 62-104 Take-Over Bids and Issuer Bids apply.”,**
 - (b) **by repealing paragraph 1.6(2)(a), and**
 - (c) **by repealing paragraph 1.6(2)(b).**
4. **Paragraph 2.2(1)(d) is amended**
 - (a) **by replacing “Multilateral” with “National”, and**
 - (b) **by deleting “and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 Take-Over Bids and Issuer Bids,”.**
5. **Paragraph 4.2(3)(a) is amended**
 - (a) **by replacing “Multilateral” with “National”, and**
 - (b) **by deleting “and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 Take-Over Bids and Issuer Bids,”.**
6. **Paragraph 5.3(3)(a) is amended**
 - (a) **by replacing “Multilateral” with “National”, and**

- (b) **by deleting** “and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*,”.

7. **Section 6.10 is amended**

- (a) **by replacing** “Multilateral” **with** “National”, **and**

- (b) **by deleting** “and in Ontario, sections 94.7 and 96.1 of the *Securities Act*,”.

8. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;

- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX L**CHANGES TO
COMPANION POLICY 61-101CP TO MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS**

1. ***Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is changed by this document.***
2. ***Section 4.1 is changed by replacing*** “Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form 62-104F1 *Take-Over Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F1 *Take-Over Bid Circular* of OSC Rule 62-504 *Take Over Bids and Issuer Bids*, and by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take Over Bids and Issuer Bids*, appropriately modified. In our view, Form 62-104F2 and in Ontario, Form 62-504F2, disclosure would generally include, in addition to Form 62-104F1 and in Ontario, Form 62-504F1, disclosure,” ***with*** “For an insider bid, in addition to the disclosure required by Form 62-104F1 *Take-Over Bid Circular* of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, subsection 2.2(1)(d) of the Instrument requires the disclosure required by Form 62-104F2 *Issuer Bid Circular* of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, appropriately modified. In our view, Form 62-104F2 disclosure would generally include”.
3. ***Section 4.2 is changed by deleting*** “, and in Ontario, Form 62-504F2,” ***wherever the expression occurs.***
4. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX M**AMENDMENTS TO
NATIONAL INSTRUMENT 62-103 THE EARLY WARNING SYSTEM
AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES**

1. ***National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues is amended by this Instrument.***
2. ***Subsection 1.1(1) is amended***
 - (a) ***by replacing “MI” with “NI” and deleting “and, in Ontario, has the meaning ascribed under paragraphs (a.1) to (f) of the definition of “associate” in subsection 1(1) of the Securities Act (Ontario)” in the definition of “associate”,***
 - (b) ***by replacing “MI” with “NI” and deleting “and, in Ontario, subsections 102.1(1) and 102.1(2) of the Securities Act (Ontario)” in the definition of “early warning requirements”,***
 - (c) ***by replacing the definition of “formal bid” with the following:***

“formal bid” means a take-over bid or issuer bid made in accordance with Part 2 of NI 62-104,;
 - (d) ***by repealing the definition of “MI 62-104”,***
 - (e) ***by replacing “MI” with “NI” and deleting “and, in Ontario, subsection 102.1(3) of the Securities Act (Ontario)” in the definition of “moratorium provisions”, and***
 - (f) ***by adding the following definition:***

“NI 62-104” means National Instrument 62-104 *Take-Over Bids and Issuer Bids*;
3. ***Appendix D is amended***
 - (a) ***by replacing “MI 62-104” with “NI 62-104” wherever the expression occurs, and***
 - (b) ***by replacing “Subsections 1(5) and 1(6) and sections 90 and 91 of the Securities Act (Ontario)” with “Subsections 1(5) and 1(6) of the Securities Act (Ontario) and sections 1.8 and 1.9 of NI 62-104”.***
4. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX N

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION

NOTICE OF ADOPTION OF
NATIONAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS

AND

REPEAL OF
ONTARIO SECURITIES COMMISSION RULE 62-504 TAKE-OVER BIDS AND ISSUER BIDS

AND

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 13-502 FEES,
ONTARIO SECURITIES COMMISSION RULE 14-501 DEFINITIONS,
ONTARIO SECURITIES COMMISSION RULE 48-501
TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS,
ONTARIO SECURITIES COMMISSION RULE 71-801
IMPLEMENTING THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM,
ONTARIO SECURITIES COMMISSION RULE 71-802
IMPLEMENTING NATIONAL INSTRUMENT 71-102 CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS
RELATING TO FOREIGN ISSUERS, AND
ONTARIO SECURITIES COMMISSION RULE 91-502 TRADES IN RECOGNIZED OPTIONS

February 25, 2016

1. INTRODUCTION

The Canadian Securities Administrators (the **CSA**) are adopting: (a) amendments to the regime governing the conduct of take-over bids, including related consequential amendments and changes to rules and policies (collectively, the **Bid Amendments**); and (b) amendments to the regime governing early warning reporting (collectively, the **Early Warning Amendments**). The Bid Amendments are described in the CSA Notice of Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) and Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (**NP 62-203**) and Consequential Amendments (the **CSA Notice**) appended to this Ontario Securities Commission (the **Commission** or **we**) notice. The Early Warning Amendments are described in the CSA Notice of Amendments to MI 62-104 and National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**), and Changes to NP 62-203 dated February 25, 2016 (the **Early Warning Notice**).

The regime governing the conduct of take-over bids and issuer bids in Ontario is currently set out in Part XX of the *Securities Act* (Ontario) (the **Act**) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (**Rule 62-504**, together with the Act, the **Ontario Bid Regime**). Provisions comprising the regime governing early warning reporting in Ontario are set out in Part XX of the Act and Rule 62-504, as well as NI 62-103.

On December 10, 2015, the *Budget Measures Act, 2015* (Ontario) (the **Budget Measures Act**) was passed by the Legislative Assembly of Ontario and received Royal Assent. Schedule 18 of the Budget Measures Act includes legislative amendments to the Act to remove the detailed take-over and issuer bid provisions and the provisions respecting early warning reporting requirements from Part XX of the Act and to include general “platform provisions” in their place (the **Platform Amendments**). The Platform Amendments will come into effect upon proclamation by the Lieutenant Governor of Ontario.

The CSA are: (a) adopting the Bid Amendments, the Early Warning Amendments, and a technical amendment set out in the CSA Notice; (b) adopting consequential amendments to certain rules; and (c) making consequential changes to certain policies, all as set out in the CSA Notice and the Early Warning Notice (collectively, the **CSA Amendments**).

To accommodate the adoption of MI 62-104, as amended by the Bid Amendments and the Early Warning Amendments and a technical amendment (such as amended instrument, **NI 62-104**) in Ontario (the **Harmonization**), the CSA is also adopting consequential amendments to certain multijurisdictional rules and making consequential changes to certain multijurisdictional policies, as set out in the CSA Notice (collectively, the **Harmonization Amendments**).

2. ONTARIO-ONLY AMENDMENTS

For the purposes of the Harmonization, the Commission is (a) adopting NI 62-104, (b) repealing Rule 62-504, and (c) adopting consequential amendments to the following Ontario-specific rules (collectively, the **Ontario Amendments**):

- Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**);
- Ontario Securities Commission Rule 14-501 *Definitions* (**Rule 14-501**);
- Ontario Securities Commission Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (**Rule 48-501**);
- Ontario Securities Commission Rule 71-801 *Implementing the Multijurisdictional Disclosure System* (**Rule 71-801**);
- Ontario Securities Commission Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**Rule 71-802**);
- Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* (**Rule 91-502**); and
- sections 43, 248, and 252 of Regulation 1015 of the Act.

3. IMPLEMENTATION OF THE ONTARIO AMENDMENTS

On January 26, 2016, the OSC made the CSA Amendments, the Harmonization Amendments, and the Ontario Amendments (collectively, the **Amendments**).

The Amendments and other required materials were delivered to the Ontario Minister of Finance on February 23, 2016. The Minister may approve or reject the Amendments, or return them for further consideration. If the Minister approves the Amendments or does not take any further action by May 9, 2016, the Amendments will come into force on the later of (a) May 9, 2016, and (b) the day on which the Platform Amendments are proclaimed into force.

4. SUBSTANCE AND PURPOSE OF CHANGES

The current requirements governing the conduct of take-over bids and issuer bids and early warning reporting in the Ontario Bid Regime are substantively the same as the requirements in MI 62-104.

The adoption of NI 62-104 in Ontario and repeal of Rule 62-504 would eliminate bifurcation as between the Ontario Bid Regime and MI 62-104 and streamline the take-over bid and issuer bid, and early warning reporting regimes in a single, harmonized national instrument.

The consequential amendments forming part of the Ontario Amendments update section and instrument references to reflect the adoption of NI 62-104 by Ontario, and accordingly, its application across all Canadian jurisdictions.

5. SCHEDULES

Schedule 1	Adoption of NI 62-104
Schedule 2	Repeal of Rule 62-504
Schedule 3	Amendments to Rule 13-502
Schedule 4	Amendments to Rule 14-501
Schedule 5	Amendments to Rule 48-501
Schedule 6	Amendments to Rule 71-801
Schedule 7	Amendments to Rule 71-802
Schedule 8	Amendments to Rule 91-502

6. COMMENTS RECEIVED IN ONTARIO

On March 31, 2015, we published a Notice of Request for Comment in respect of the Ontario Amendments (the **2015 Materials**). The comment period for the 2015 Materials ended on June 29, 2015. We did not receive any comment letters in respect of the 2015 Materials.

7. QUESTIONS

Questions may be referred to:

Naizam Kanji
Director
Office of Mergers & Acquisitions
Ontario Securities Commission
(416) 593-8060
nkanji@osc.gov.on.ca

Jason Koskela
Senior Legal Counsel
Office of Mergers & Acquisitions
Ontario Securities Commission
(416) 595-8922
jkoskela@osc.gov.on.ca

Adeline Lee
Legal Counsel
Office of Mergers & Acquisitions
Ontario Securities Commission
(416) 595-8945
alee@osc.gov.on.ca

SCHEDULE 1

ADOPTION OF
NATIONAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDSNATIONAL INSTRUMENT 62-104
TAKE-OVER BIDS AND ISSUER BIDS

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NATIONAL INSTRUMENT 62-104
TAKE-OVER BIDS AND ISSUER BIDS

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument,

“**Act**” means, in the jurisdiction, the statute referred to in Appendix B to National Instrument 14-101 *Definitions*;

“**alternative transaction**” means, for an issuer:

- (a) an amalgamation, merger, arrangement, consolidation, or any other transaction of the issuer, or an amendment to the terms of a class of equity securities of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder’s consent, regardless of whether the equity security is replaced with another security, but does not include
 - (i) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, except to an extent that is nominal in the circumstances,
 - (ii) a circumstance in which the issuer may terminate a holder’s interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership, or
 - (iii) a transaction solely between or among the issuer and one or more subsidiaries of the issuer,
- (b) a sale, lease or exchange of all or substantially all the property of the issuer if the sale, lease or exchange is not in the ordinary course of business of the issuer, but does not include a sale, lease or exchange solely between or among the issuer and one or more subsidiaries of the issuer;

“**associate**”, when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which a person serves as trustee or in a similar capacity, or
- (d) a relative of that person, if the relative has the same home as that person, including
 - (i) the spouse or, in Alberta, adult interdependent partner of that person, or
 - (ii) a relative of the person’s spouse or, in Alberta, adult interdependent partner;

“**bid circular**” means a bid circular prepared in accordance with section 2.10;

“**business day**” means a day other than a Saturday, a Sunday or a day that is a statutory holiday in the jurisdiction;

“**class of securities**” includes a series of a class of securities;

“**consultant**” has the same meaning as in National Instrument 45-106 *Prospectus Exemptions*;

“**deposit period news release**” means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 105 days and not less than 35 days, expressed as a number of days from the date of the bid;

“**equity security**” means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets;

“initial deposit period” means the period, including any extension, during which securities may be deposited under a take-over bid but does not include

- (a) a mandatory 10-day extension period, or
- (b) any extension to the period during which securities may be deposited if the extension is made after a mandatory 10-day extension period;

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and also includes an acquisition or redemption of securities of the issuer by the issuer from those persons, but does not include an offer to acquire or redeem, or an acquisition or redemption if

- (a) no valuable consideration is offered or paid by the issuer for the securities,
- (b) the offer to acquire or redeem, or the acquisition or redemption is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders, or
- (c) the securities are debt securities that are not convertible into securities other than debt securities;

“mandatory 10-day extension period” means the period referred to in paragraph 2.31.1(a);

“offer to acquire” means

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not the offer has been solicited, or
- (c) any combination of the above;

“offeree issuer” means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;

“offeror” means, except in Division 1 of Part 2 of this Instrument, a person that makes a take-over bid, an issuer bid or an offer to acquire;

“offeror’s securities” means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person acting jointly or in concert with the offeror;

“partial take-over bid” means a take-over bid for less than all of the outstanding securities of the class of securities subject to the bid;

“person” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person’s capacity as a trustee, executor, administrator or personal or other legal representative;

“published market” means, with respect to any class of securities, a market in Canada or outside of Canada on which the securities are traded, if the prices at which they have been traded on that market are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“standard trading unit” means

- (a) 1,000 units of a security with a market price of less than \$0.10 per unit,

- (b) 500 units of a security with a market price of \$0.10 or more per unit and less than \$1.00 per unit, and
- (c) 100 units of a security with a market price of \$1.00 or more per unit;

“**subsidiary**” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

“**take-over bid**” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20% or more of the outstanding securities of that class of securities at the date of the offer to acquire but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders.

Definitions for purposes of the Act

1.2 (1) Except in Saskatchewan, in the Act,

- (a) “**offer to acquire**” has the same meaning as in this Instrument, and
- (b) “**offeror**” has the same meaning as in section 1.1 of this Instrument.

(2) In the definition of “**issuer bid**” in the Act, the prescribed class of issuer bids is that set out in the definition of “**issuer bid**” in this Instrument.

(3) In the definition of “**take-over bid**” in the Act, the prescribed class of take-over bids is that set out in the definition of “**take-over bid**” in this Instrument.

Affiliate

1.3 In this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.4 In this Instrument, a person controls a second person if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless the first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Computation of time

1.5 In this Instrument, a period of days is to be computed as beginning on the day following the event that began the period and ending at 11:59 p.m. on the last day of the period if that day is a business day or at 11:59 p.m. on the next business day if the last day of the period does not fall on a business day.

Expiry of bid

1.6 A take-over bid or an issuer bid expires at the later of

- (a) the end of the period, including any extension, during which securities may be deposited under the bid, and
- (b) the time at which the offeror becomes obligated by the terms of the bid to take up or reject securities deposited under the bid.

Convertible securities

1.7 In this Instrument,

- (a) a security is deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer, and
- (b) a security that is convertible into a security of another class is deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed beneficial ownership

1.8 (1) In this Instrument, in determining the beneficial ownership of securities of an offeror, of an acquiror or of any person acting jointly or in concert with the offeror or the acquiror, at any given date, the offeror, the acquiror or the person is deemed to have acquired and to be the beneficial owner of a security, including an unissued security, if the offeror, the acquiror or the person

- (a) is the beneficial owner of a security convertible into the security within 60 days following that date, or
- (b) has a right or obligation permitting or requiring the offeror, the acquiror or the person, whether or not on conditions, to acquire beneficial ownership of the security within 60 days by a single transaction or a series of linked transactions.

(2) The number of outstanding securities of a class in respect of an offer to acquire includes securities that are beneficially owned as determined in accordance with subsection (1).

(3) If 2 or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to the offer or offers to acquire are deemed to be securities subject to the offer to acquire of each offeror for the purpose of determining whether an offeror is making a take-over bid.

(4) In this section, an offeror is not a beneficial owner of securities solely because there is an agreement, commitment or understanding that a security holder will tender the securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

(5) In Québec, for the purposes of this Instrument, a person that beneficially owns securities means a person that owns the securities or that holds securities registered under the name of an intermediary acting as nominee, including a trustee or agent.

Acting jointly or in concert

1.9 (1) In this Instrument, it is a question of fact as to whether a person is acting jointly or in concert with an offeror or an acquiror and, without limiting the generality of the foregoing,

- (a) the following are deemed to be acting jointly or in concert with an offeror or an acquiror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror, the acquiror or with any other person acting jointly or in concert with the offeror or the acquiror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
 - (ii) an affiliate of the offeror or the acquiror;
- (b) the following are presumed to be acting jointly or in concert with an offeror or an acquiror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror, the acquiror or with any other person acting jointly or in concert with the offeror or the acquiror, intends to exercise jointly or in concert with the offeror, the acquiror or with any person acting jointly or in concert with the offeror or the acquiror any voting rights attaching to any securities of the offeree issuer;
 - (ii) an associate of the offeror or the acquiror.

(2) Subsection (1) does not apply to a registered dealer acting solely in an agency capacity for the offeror in connection with a bid and not executing principal transactions in the class of securities subject to the offer to acquire or performing services beyond the customary functions of a registered dealer.

(3) For the purposes of this section, a person is not acting jointly or in concert with an offeror solely because there is an agreement, commitment or understanding that the person will tender securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

Application to direct and indirect offers

1.10 In this Instrument, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities includes a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

Determination of market price

1.11 (1) In this Instrument,

- (a) the market price of a class of securities for which there is a published market, at any date, is an amount equal to the simple average of the closing price of securities of that class for each of the business days on which there was a closing price in the 20 business days preceding that date,
- (b) if a published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the market price of the securities, at any date, is an amount equal to the average of the simple averages of the highest and lowest prices for each of the business days on which there were highest and lowest prices in the 20 business days preceding that date, and
- (c) if there has been trading of securities in a published market for fewer than 10 of the 20 business days preceding the date as of which the market price of the securities is being determined, the market price is the average of the following prices established for each day of the 20 business days preceding that date:
 - (i) the average of the closing bid and ask prices for each day on which there was no trading; and
 - (ii) either the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price, or the average of the highest and lowest prices of securities of that class for each day that there has been trading, if the published market provides only the highest and lowest prices of securities traded on a particular day.

(2) If there is more than one published market for a security, the market price in paragraphs (1)(a), (b) and (c) must be determined as follows:

- (a) if only one of the published markets is in Canada, the market price must be determined solely by reference to that market;
- (b) if there is more than one published market in Canada, the market price must be determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 business days preceding the date as of which the market price is being determined;
- (c) if there is no published market in Canada, the market price must be determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 business days preceding the date as of which the market price is being determined.

(3) Despite subsections (1) and (2) for the purposes of section 4.1 and subsection 4.8(3), if an offeror acquires securities on a published market, the market price for those securities is the price of the last standard trading unit of securities of that class purchased, before the acquisition by the offeror, by a person who was not acting jointly or in concert with the offeror.

PART 2: BIDS**Division 1: Restrictions on Acquisitions or Sales****Definition of “offeror”**

2.1 In this Division, “offeror” means

- (a) a person making a take-over bid or an issuer bid that is not exempt from Part 2,
- (b) a person acting jointly or in concert with a person referred to in paragraph (a),
- (c) a control person of a person referred to in paragraph (a), or
- (d) a person acting jointly or in concert with a control person referred to in paragraph (c).

Restrictions on acquisitions during take-over bid

2.2 (1) An offeror must not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid or securities convertible into securities of that class otherwise than under the bid on and from the day of the announcement of the offeror’s intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not apply to an agreement between a security holder and the offeror to the effect that the security holder will, in accordance with the terms and conditions of a take-over bid that is not exempt from Part 2, deposit the security holder’s securities under the bid.

(3) Despite subsection (1), an offeror may purchase securities of the class that are subject to a take-over bid and securities convertible into securities of that class beginning on the 3rd business day following the date of the bid until the expiry of the bid if all of the following conditions are satisfied:

- (a) the intention of the offeror,
 - (i) on the date of the bid, is to make purchases and that intention is stated in the bid circular, or
 - (ii) to make purchases changes after the date of the bid and that intention is stated in a news release issued and filed at least one business day prior to making such purchases;
- (b) the number of securities beneficially acquired under this subsection does not exceed 5% of the outstanding securities of that class as at the date of the bid;
- (c) the purchases are made in the normal course on a published market;
- (d) the offeror issues and files a news release immediately after the close of business of the published market on each day on which securities have been purchased under this subsection disclosing the following information:
 - (i) the name of the purchaser;
 - (ii) if the purchaser is a person referred to in paragraph 2.1(b), (c) or (d), the relationship of the purchaser and the offeror;
 - (iii) the number of securities purchased on the day for which the news release is required;
 - (iv) the highest price paid for the securities on the day for which the news release is required;
 - (v) the aggregate number of securities purchased on the published market during the currency of the bid;
 - (vi) the average price paid for the securities that were purchased on the published market during the currency of the bid; and
 - (vii) the total number of securities owned by the purchaser after giving effect to the purchases that are the subject of the news release;

- (e) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (f) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;
- (g) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid;
- (h) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(4) For the purposes of paragraph 2.2(3)(b), the acquisition of beneficial ownership of securities that are convertible into securities of the class that is subject to the bid shall be deemed to be an acquisition of the securities as converted.

Restrictions on acquisitions during issuer bid

2.3 (1) An offeror must not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to an issuer bid, or securities that are convertible into securities of that class, otherwise than under the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not prevent the offeror from purchasing, redeeming or otherwise acquiring any securities of the class subject to the bid in reliance on an exemption under paragraph 4.6(a), (b) or (c).

Restrictions on acquisitions before take-over bid

2.4 (1) If, within the period of 90 days immediately preceding a take-over bid, an offeror acquired beneficial ownership of securities of the class subject to the bid in a transaction not generally available on identical terms to holders of that class of securities,

- (a) the offeror must offer
 - (i) consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any such prior transaction, or
 - (ii) at least the cash equivalent of that consideration, and
- (b) the offeror must offer to acquire under the bid that percentage of the securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in any such prior transaction was of the total number of securities of that class beneficially owned by that seller at the time of that prior transaction.

(2) Subsection (1) does not apply to a transaction that occurred within 90 days preceding the bid if either of the following conditions are satisfied:

- (a) the transaction is a trade in a security of the issuer that had not been previously issued;
- (b) the transaction is a trade by or on behalf of the issuer in a previously issued security of that issuer that had been redeemed or purchased by, or donated to, that issuer.

Restrictions on acquisitions after bid

2.5 During the period beginning with the expiry of a take-over bid or an issuer bid and ending at the end of the 20th business day after that, whether or not any securities are taken up under the bid, an offeror must not acquire or offer to acquire beneficial ownership of securities of the class that was subject to the bid except by way of a transaction that is generally available to holders of that class of securities on identical terms.

Exception

2.6 Subsection 2.4(1) and section 2.5 do not apply to purchases made by an offeror in the normal course on a published market if all of the following conditions are satisfied:

- (a) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (b) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;
- (c) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid;
- (d) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

Restrictions on sales during bid

2.7 (1) An offeror, except under a take-over bid or an issuer bid, must not sell, or make or enter into an agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, beginning on the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Despite subsection (1), an offeror may, before the expiry of a bid, make or enter into an agreement, commitment or understanding to sell securities that may be taken up by the offeror under the bid, after the expiry of the bid, if the intention to sell is disclosed in the bid circular.

(3) Subsection (1) does not apply to an offeror under an issuer bid in respect of the issue of securities under a dividend plan, dividend reinvestment plan, employee purchase plan or another similar plan.

Division 2: Making a Bid

Duty to make bid to all security holders

2.8 An offeror must make a take-over bid or an issuer bid to all holders of the class of securities subject to the bid who are in the local jurisdiction by sending the bid to

- (a) each holder of that class of securities whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and
- (b) each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of that class, whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

Commencement of bid

2.9 (1) An offeror must commence a take-over bid by

- (a) publishing an advertisement containing a brief summary of the take-over bid in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English, or
- (b) sending the bid to security holders described in section 2.8.

(2) An offeror must commence an issuer bid by sending the bid to security holders described in section 2.8.

Offeror's circular

2.10 (1) An offeror making a take-over bid or an issuer bid must prepare and send, either as part of the bid or together with the bid, a take-over bid circular or an issuer bid circular, as the case may be, in the following form:

- (a) Form 62-104F1 Take-Over Bid Circular, for a take-over bid; or
- (b) Form 62-104F2 Issuer Bid Circular, for an issuer bid.

- (2) An offeror commencing a take-over bid under paragraph 2.9(1)(a) must,
- (a) on or before the date of first publication of the advertisement,
 - (i) deliver the bid and the bid circular to the offeree issuer's principal office,
 - (ii) file the bid, the bid circular and the advertisement,
 - (iii) request from the offeree issuer a list of security holders described in section 2.8, and
 - (b) not later than 2 business days after receipt of the list of security holders referred to in subparagraph (a)(iii), send the bid and the bid circular to those security holders.
- (3) An offeror commencing a take-over bid under paragraph 2.9(1)(b) must file the bid and the bid circular and deliver them to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that.
- (4) An offeror making an issuer bid must file the bid and the bid circular on the day the bid is sent, or as soon as practicable after that.

Change in information

2.11 (1) If, before the expiry of a take-over bid or an issuer bid or after the expiry of a bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in the bid circular or any notice of change or notice of variation that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid, the offeror must promptly

- (a) issue and file a news release, and
- (b) send a notice of the change to every person to whom the bid was required to be sent and whose securities were not taken up before the date of the change.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

(2) Subsection (1) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

(3) In this section, a variation in the terms of a bid does not constitute a change in information.

(4) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

(5) If, under subsection (1), an offeror is required to send a notice of change before the expiry of the initial deposit period

- (a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of change, and
- (b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of change.

Variation of terms

2.12 (1) If there is a variation in the terms of a take-over bid or an issuer bid, including any reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or any extension of the period during which securities may be deposited under the bid, and whether or not that variation results from the exercise of any right contained in the bid, the offeror must promptly

- (a) issue and file a news release, and
- (b) send a notice of variation to every person to whom the bid was required to be sent under section 2.8 and whose securities were not taken up before the date of the variation.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

(2) A notice of variation must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

(3) If there is a variation in the terms of a take-over bid or an issuer bid, the period during which securities may be deposited under the bid must not expire before 10 days after the date of the notice of variation.

(3.1) If, under subsection (1), an offeror is required to send a notice of variation before the expiry of the initial deposit period

- (a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of variation, and
- (b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of variation.

(4) Subsections (1), (3) and (3.1) do not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid, other than an extension in respect of the mandatory 10-day extension period, resulting from the waiver where the consideration offered for the securities consists solely of cash, but in that case the offeror must promptly issue and file a news release announcing the waiver.

(5) An offeror must not make a variation in the terms of an issuer bid, other than a variation that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, after the expiry of the period, including any extension of the period, during which the securities may be deposited under the bid.

(6) An offeror must not make a variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1.

Filing and sending notice of change or notice of variation

2.13 A notice of change or notice of variation in respect of a take-over bid or an issuer bid must be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office, on the day the notice of change or notice of variation is sent to security holders of the offeree issuer, or as soon as practicable after that.

Change or variation in advertised take-over bid

2.14 (1) If a change or variation occurs to a take-over bid that was commenced by means of an advertisement, and if the offeror has complied with paragraph 2.10(2)(a) but has not yet sent the bid and the bid circular under paragraph 2.10(2)(b), the offeror must

- (a) publish an advertisement that contains a brief summary of the change or variation in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English,
- (b) concurrently with the date of first publication of the advertisement,
 - (i) file the advertisement, and
 - (ii) file and deliver a notice of change or notice of variation to the offeree issuer's principal office, and
- (c) subsequently send the bid, the bid circular and the notice of change or notice of variation to the security holders of the offeree issuer before the expiration of the period set out in paragraph 2.10(2)(b).

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or notice of variation is not required to be filed and delivered under section 2.13.

Consent of expert – bid circular

2.15 (1) In this section and section 2.21, an expert includes a notary in Québec, solicitor, auditor, accountant, engineer, geologist or appraiser or any other person whose profession or business gives authority to a report, valuation, statement or opinion made by that person.

(2) If a report, valuation, statement or opinion of an expert is included in or accompanies a bid circular or any notice of change or notice of variation to the circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the bid circular, notice of change or notice of variation.

Delivery and date of bid documents

2.16 (1) A take-over bid, an issuer bid, a bid circular and every notice of change or notice of variation must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Except for a take-over bid commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

(3) If a take-over bid is commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation is deemed to have been dated as of the date of first publication of the relevant advertisement.

Division 3: Offeree Issuer's Obligations

Duty to prepare and send directors' circular

2.17 (1) If a take-over bid has been made, the board of directors of the offeree issuer must prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person to whom the bid was required to be sent under section 2.8.

(2) The board of directors of the offeree issuer must evaluate the terms of the take-over bid and, in the directors' circular,

- (a) must recommend to security holders that they accept or reject the bid and state the reasons for the recommendation,
- (b) must advise security holders that the board is unable to make, or is not making, a recommendation and state the reasons for being unable to make a recommendation or for not making a recommendation, or
- (c) must advise security holders that the board is considering whether to make a recommendation to accept or reject the bid, must state the reasons for not making a recommendation in the directors' circular and may advise security holders that they should not deposit their securities under the bid until they receive further communication from the board of directors in accordance with paragraph (a) or (b).

(3) If paragraph (2)(c) applies, the board of directors must communicate to security holders a recommendation to accept or reject the bid or the decision that it is unable to make, or is not making, a recommendation, together with the reasons for the recommendation or decision, at least 7 days before the scheduled expiry of the initial deposit period.

(4) A directors' circular must be in the form of Form 62-104F3 Directors' Circular.

Notice of change

2.18 (1) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a directors' circular or in any notice of change to the directors' circular that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, the board of directors of the offeree issuer must promptly issue and file a news release relating to the change and send a notice of the change to every person to whom the take-over bid was required to be sent disclosing the nature and substance of the change.

(2) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Filing directors' circular or notice of change

2.19 The board of directors of the offeree issuer must concurrently file the directors' circular or a notice of change in relation to it and deliver it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that date.

Individual director's or officer's circular

2.20 (1) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a separate director's or officer's circular to every person to whom the take-over bid was required to be sent under section 2.8.

(2) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a director's or officer's circular or any notice of change in relation to it that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, other than a change that is not within the control of the director or officer, as the case may be, that director or officer must promptly send a notice of change to every person to whom the take-over bid was required to be sent under section 2.8.

(3) A director's or officer's circular must be in the form of Form 62-104F4 Director's or Officer's Circular.

(4) A director's or officer's obligation to send a circular under subsection (1) or to send a notice of change under subsection (2) may be satisfied by sending the circular or the notice of change, as the case may be, to the board of directors of the offeree issuer.

(5) If a director or officer sends to the board of directors of the offeree issuer a circular under subsection (1) or a notice of change under subsection (2), the board, at the offeree issuer's expense, must promptly send a copy of the circular or notice to every person to whom the take-over bid was required to be sent under section 2.8.

(6) The board of directors of the offeree issuer or the individual director or officer, as the case may be, must concurrently file the director's or officer's circular or a notice of change in relation to it and send it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that.

(7) A notice of change in relation to a director's or officer's circular must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Consent of expert – directors' circular/individual director's or officer's circular

2.21 If a report, valuation, statement or opinion of an expert is included in or accompanies a directors' circular, an individual director's or officer's circular or any notice of change to either circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the circular or notice.

Delivery and date of offeree issuer's documents

2.22 (1) A directors' circular, an individual director's or officer's circular and every notice of change must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Any circular or notice sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

Division 4: Offeror's Obligations**Consideration**

2.23 (1) If a take-over bid or an issuer bid is made, all holders of the same class of securities must be offered identical consideration.

(2) Subsection (1) does not prohibit an offeror from offering an identical choice of consideration to all holders of the same class of securities.

(3) If a variation in the terms of a take-over bid or an issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror must pay that increased consideration to each person whose securities are taken up under the bid, whether or not the securities were taken up by the offeror before the variation of the bid.

Prohibition against collateral agreements

2.24 If a person makes or intends to make a take-over bid or an issuer bid, the person or any person acting jointly or in concert with that person must not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.

Collateral agreements – exception

2.25 (1) Section 2.24 does not apply to an employment compensation arrangement, severance arrangement or other employment benefit arrangement that provides

- (a) an enhancement of employee benefits resulting from participation by the security holder of the offeree issuer in a group plan, other than an incentive plan, for employees of a successor to the business of the offeree issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the offeree issuer who hold positions of a similar nature to the position held by the security holder, or
- (b) a benefit not described in paragraph (a) that is received solely in connection with the security holder's services as an employee, director or consultant of the offeree issuer, of an affiliated entity of the offeree issuer, or of a successor to the business of the offeree issuer, if
 - (i) at the time the bid is publicly announced, the security holder and its associates beneficially own or exercise control or direction over less than 1% of the outstanding securities of each class of securities of the offeree issuer subject to the bid, or
 - (ii) an independent committee of directors of the offeree issuer, acting in good faith, has determined that
 - (A) the value of the benefit, net of any offsetting costs to the security holder, is less than 5% of the amount referred to in paragraph 3(a), or
 - (B) the security holder is providing at least equivalent value in exchange for the benefit.

(2) In order to rely on an exception under paragraph (1)(b) the following conditions must be satisfied:

- (a) the benefit is not conferred for the purpose, in whole or in part, of increasing the amount of the consideration paid to the security holder for securities deposited under the bid or providing an incentive to deposit under the bid;
- (b) the conferring of the benefit is not, by its terms, conditional on the security holder supporting the bid in any manner; and
- (c) full particulars of the benefit are disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(3) In order to rely on an exception under subparagraph 1(b)(ii) the following conditions must be satisfied:

- (a) the security holder receiving the benefit has disclosed to the independent committee the amount of consideration that the security holder expects it will be beneficially entitled to receive under the terms of the bid in exchange for the securities beneficially owned by the security holder; and
- (b) the determination of the independent committee under subparagraph 1(b)(ii) is disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(4) In this section, in determining the beneficial ownership of securities of a holder at a given date, any security or right or obligation permitting or requiring the security holder or any person acting jointly or in concert with the security holder, whether or not on conditions, to acquire a security, including an unissued security, of a particular class within 60 days by a single transaction or a series of linked transactions is deemed to be a security of a particular class.

Proportionate take up and payment – issuer bids

2.26 (1) If an issuer bid is made for less than all of the class of securities subject to the bid and a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) Subsection (1) does not prohibit an offeror from acquiring securities under the terms of an issuer bid that, if not acquired, would constitute less than a standard trading unit for the security holder.

(3) Subsection (1) does not apply to securities deposited under the terms of an issuer bid by security holders who

- (a) are entitled to elect a minimum price per security, within a range of prices, at which they are willing to sell their securities under the bid, and
- (b) elect a minimum price which is higher than the price that the offeror pays for securities under the bid.

Proportionate take up and payment – take-over bids

2.26.1 (1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction.

Financing arrangements

2.27 (1) If a take-over bid or an issuer bid provides that the consideration for the securities deposited under the bid is to be paid in cash or partly in cash, the offeror must make adequate arrangements before the bid to ensure that the required funds are available to make full payment for the securities that the offeror has offered to acquire.

(2) The financing arrangements required to be made under subsection (1) may be subject to conditions if, at the time the take-over bid or the issuer bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for the securities deposited under the bid due to a financing condition not being satisfied.

Division 5: Bid Mechanics**Minimum deposit period – issuer bids**

2.28 An offeror must allow securities to be deposited under an issuer bid for a minimum deposit period of at least 35 days from the date of the bid.

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 105 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

- (a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the deposit period news release referred to in subsection (1) and the bid has yet to expire;

- (b) the offeror, after the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of expiry of the take-over bid referred to in subsection (1),
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

- (a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the news release and the bid has yet to expire;
- (b) the offeror, after the issuance of the news release, commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of completion or abandonment of the alternative transaction,
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a).

Restriction on take up – issuer bids

2.29 An offeror must not take up securities deposited under an issuer bid until the expiration of 35 days from the date of the bid.

Restriction on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following apply:

- (a) a period of 105 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, has elapsed from the date of the bid;
- (b) all the terms and conditions of the bid have been complied with or waived;
- (c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

Withdrawal of securities

2.30 (1) A security holder may withdraw securities deposited under a take-over bid or an issuer bid

- (a) at any time before the securities have been taken up by the offeror,
- (b) at any time before the expiration of 10 days from the date of a notice of change under section 2.11 or a notice of variation under section 2.12, or
- (c) if the securities have not been paid for by the offeror within 3 business days after the securities have been taken up.

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder must not withdraw securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

- (a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and

- (b) ending at the time the offeror becomes obligated under either subsection 2.32.1(7) or (8) to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6).

(2) Despite paragraph (1)(b), a security holder must not withdraw securities deposited if

- (a) the securities have been taken up by the offeror before the date of the notice of change or notice of variation,
- (a.1) in the case of a partial take-over bid, the securities were deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or
- (b) any of the following apply:
 - (i) there is a variation in the terms of a take-over bid or issuer bid consisting solely of an increase in consideration offered for the securities and an extension of the time for deposit to not later than 10 days after the date of the notice of variation;
 - (ii) there is a variation in the terms of a take-over bid or issuer bid consisting solely of the waiver of one or more of the conditions of the bid where the consideration offered for the securities subject to the take-over bid or the issuer bid consists solely of cash;
 - (iii) in the case of a take-over bid, there is a variation in the terms after the expiry of the initial deposit period consisting of either an increase in the consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation.

(3) The withdrawal of any securities under subsection (1) is made by sending a written notice to the depository designated in the bid circular and becomes effective on its receipt by the depository.

(4) If notice is given in accordance with subsection (3), the offeror must promptly return the securities to the security holder.

Effect of market purchases

2.31 If an offeror purchases securities under subsection 2.2(3), the purchased securities must not be counted in determining whether the minimum tender requirement in paragraph 2.29.1(c) is satisfied and the purchase does not reduce the number of securities the offeror is bound to take up under the take-over bid.

Mandatory 10-day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a take-over bid pursuant to subsection 2.32.1(1), the offeror must

- (a) extend the period during which securities may be deposited under the bid for a period of at least 10 days, and
- (b) promptly issue and file a news release disclosing the following:
 - (i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,
 - (ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,
 - (iii) that the period during which securities may be deposited under the bid has been extended for the mandatory 10-day extension period, and
 - (iv) in the case of a take-over bid that
 - (A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible, and in any event not later than 3 business days after the securities are taken up, or
 - (B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event will take up the deposited securities not later than one business day after the expiry of the mandatory

10-day extension period and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up.

Time limit on extension – partial take-over bids

2.31.2 In the case of a partial take-over bid,

- (a) the mandatory 10-day extension period must not exceed 10 days, and
- (b) the bid must not be extended after the expiry of the mandatory 10-day extension period.

Obligation to take up and pay for deposited securities – issuer bids

2.32 (1) If all the terms and conditions of an issuer bid have been complied with or waived, the offeror must take up and pay for securities deposited under the bid not later than 10 days after the expiry of the bid or at the time required by subsection (2) or (3), whichever is earliest.

(2) An offeror must pay for any securities taken up under an issuer bid as soon as possible, and in any event not later than 3 business days after securities deposited under the bid are taken up.

(3) Securities deposited under an issuer bid subsequent to the date on which the offeror first takes up securities deposited under the bid must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) An offeror must not extend its issuer bid if all the terms and conditions of the bid have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsections (3) and (4), if an issuer bid is made for less than all of the class of securities subject to the bid, an offeror is required to take up, by the times specified in those subsections, only the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26 at the expiry of the bid.

(6) Despite subsection (4), if the offeror waives any terms or conditions of an issuer bid and extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

Obligation to take up and pay for deposited securities – take-over bids

2.32.1 (1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period, all of the following apply:

- (a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed;
- (b) all the terms and conditions of the bid have been complied with or waived;
- (c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10-day extension period, or an extension period made after the mandatory 10-day extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid beyond the expiry of the mandatory 10-day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the offeror must extend the bid without the offeror first taking up the securities which are subject to the rights of withdrawal.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is required to take up, by the time specified in that subsection, only the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the mandatory 10-day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10-day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

Return of deposited securities

2.33 If, following the expiry of a take-over bid or an issuer bid, an offeror knows that it will not take up securities deposited under the bid, the offeror must promptly issue and file a news release to that effect and return the securities to the security holders.

News release on expiry of bid

2.34 If all the terms and conditions of a take-over bid or an issuer bid have been complied with or waived, the offeror must issue and file a news release to that effect promptly after the expiry of the bid, and the news release must disclose

- (a) the approximate number of securities deposited, and
- (b) the approximate number that will be taken up.

PART 3: GENERAL

Language of bid documents

3.1 (1) A person must file a document required under this Instrument in French or English.

(2) In Québec, a take-over bid circular, issuer bid circular, directors' circular, director's or officer's circular, notice of change or notice of variation required under Part 2 must be in French or in French and English.

(3) Subsection (1) does not apply to an exempt take-over bid made under section 4.4, or an exempt issuer bid made under section 4.10.

(4) Despite subsection (1), if a person files a document only in French or English, but delivers to a security holder a version of the document in the other language, the person must file that other version not later than when it is first delivered to the security holder.

Filing of documents

3.2 (1) An offeror making a take-over bid under Part 2 must file copies of the following documents, and any amendments to those documents:

- (a) any agreement between the offeror and a security holder of the offeree issuer relating to the take-over bid, including any agreement to the effect that the security holder will deposit its securities to the take-over bid made by the offeror;
- (b) any agreement between the offeror and directors or officers of an offeree issuer relating to the take-over bid;
- (c) any agreement between the offeror and an offeree issuer relating to the take-over bid;
- (d) any other agreement of which the offeror is aware that could affect control of the offeree issuer, including any agreement with change of control provisions, any security holder agreement or any voting trust agreement, that the offeror has access to and can reasonably be regarded as material to a security holder in deciding whether to deposit securities under the bid.

(2) An offeree issuer whose securities are the subject of a take-over bid under Part 2 must file copies of any agreement of which the offeree issuer is aware that could affect control of the offeree issuer, including an agreement with change of control provisions, a security holder agreement or a voting trust agreement, that the offeree issuer has access to and can reasonably be regarded as material to a security holder in deciding whether to deposit securities under the bid.

- (3) The documents required to be filed
- (a) under subsection (1) must be filed on the day the take-over bid circular is filed under section 2.10, and
 - (b) under subsection (2) must be filed on the day that the directors' circular is filed under section 2.19.
- (4) If an agreement required to be filed under subsection (1) or (2) is entered into after a take-over bid circular referred to in subsection (1) or the directors' circular referred to in subsection (2) is filed, the agreement must be filed promptly but not later than 2 business days from the date that the agreement was entered into.
- (5) If a document required to be filed under subsection (1) or (2) has already been filed in electronic format under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR), the requirement to file the document may be satisfied by filing a letter describing the document and stating the filing date and project number.
- (6) A document dated before March 30, 2004 that is required to be filed under subsection (1) or (2) may be filed in paper format if it does not exist in an acceptable electronic format under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR).
- (7) A provision in a document required to be filed under subsection (1) or (2) may be omitted or marked so as to be unreadable if
- (a) the filer has reasonable grounds to believe that disclosure of the provision would be seriously prejudicial to the interests of the filer or would violate confidentiality provisions,
 - (b) the provision does not contain information relating to the filer or its securities that would be necessary to understand the document, and
 - (c) in the copy of the document filed by the filer, the filer includes a brief description of the information that has been omitted or marked so as to be unreadable immediately after the provision that has been omitted or marked.

Certification of bid circulars

3.3 (1) A bid circular or a notice of change or notice of variation in respect of the bid circular required under this Instrument must contain a certificate of the offeror in the required form signed

- (a) if the offeror is a person other than an individual, by each of the following:
 - (i) the chief executive officer or, in the case of a person that does not have a chief executive officer, the individual who performs similar functions to a chief executive officer,
 - (ii) the chief financial officer or, in the case of a person that does not have a chief financial officer, the individual who performs similar functions to a chief financial officer, and
 - (iii) 2 directors, other than the chief executive officer and the chief financial officer, who are duly authorized by the board of directors of that person to sign on behalf of the board of directors, or
- (b) if the offeror is an individual, by the individual.

(2) For the purposes of subsection (1)(a), if the offeror has fewer than 4 directors and officers, the certificate must be signed by all of the directors and officers.

(3) A directors' circular or a notice of change in respect of a directors' circular required under this Instrument must contain a certificate of the board of directors of the offeree issuer in the required form signed by 2 directors who are duly authorized by the board of directors of that person to sign on behalf of the board of directors.

(4) Every person that files and sends an individual director's or officer's circular or a notice of change in respect of an individual director's or officer's circular under this Instrument must ensure that the circular or notice contains a certificate in the required form and signed by or on behalf of the director or officer sending the circular or notice.

(5) If the regulator or securities regulatory authority is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate required under this Instrument, the regulator or securities regulatory authority may accept a certificate signed by another officer or director.

Obligation to provide security holder list

3.4 (1) If a person makes or proposes to make a take-over bid under Part 2 for a class of securities of an issuer that is not otherwise required by law to provide a list of its security holders to the person, the issuer must provide a list of holders of that class of securities, and any known holder of an option or right to acquire securities of that class, to enable the person to carry out the bid in compliance with this Instrument.

(2) For the purposes of subsection (1), section 21 of the *Canada Business Corporations Act* applies with necessary modifications to the person making or proposing to make the take-over bid and to the issuer, except that the affidavit that accompanies the request for the list of security holders must state that the list will not be used except in connection with a bid made under Part 2 for securities of the issuer.

PART 4: EXEMPTIONS**Division 1: Exempt Take-Over Bids****Normal course purchase exemption**

4.1 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the bid is for not more than 5% of the outstanding securities of a class of securities of the offeree issuer;
- (b) the aggregate number of securities acquired in reliance on this exemption by the offeror and any person acting jointly or in concert with the offeror within any period of 12 months, when aggregated with acquisitions otherwise made by the offeror and any person acting jointly or in concert with the offeror within the same 12-month period, other than under a bid that is subject to Part 2, does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period;
- (c) there is a published market for the class of securities that are the subject of the bid;
- (d) the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition, as determined in accordance with section 1.11, plus reasonable brokerage fees or commissions actually paid.

Private agreement exemption

4.2 (1) A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) purchases are made from not more than 5 persons in the aggregate, including persons located outside the local jurisdiction;
- (b) the bid is not made generally to security holders of the class of securities that is the subject of the bid, so long as there are more than 5 security holders of the class;
- (c) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities, including brokerage fees or commissions, is not greater than 115% of the market price of the securities at the date of the bid as determined in accordance with section 1.11;
- (d) if there is no published market for the securities acquired, there is a reasonable basis for determining that the value of the consideration paid for any of the securities is not greater than 115% of the value of the securities.

(2) In subsection (1), if an offeror makes an offer to acquire securities from a person and the offeror knows or ought to know after reasonable enquiry that

- (a) the person acquired the securities in order that the offeror might make use of the exemption under subsection (1), then each person from whom those securities were acquired must be included in the determination of the number of persons to whom an offer to acquire has been made, or
- (b) the person from whom the acquisition is being made is acting as a nominee, agent, trustee, executor, administrator or other legal representative for one or more other persons having a direct beneficial interest in those securities, then each of those other persons must be included in the determination of the number of persons to whom an offer to acquire has been made.

(3) Despite paragraph (2)(b), a trust or estate is to be considered a single security holder in the determination of the number of persons to whom an offer to acquire has been made if

- (a) an inter vivos trust has been established by a single settlor, or
- (b) an estate has not vested in all persons who are beneficially entitled to it.

Non-reporting issuer exemption

4.3 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the offeree issuer is not a reporting issuer;
- (b) there is no published market for the securities that are the subject of the bid;
- (c) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who
 - (i) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or
 - (ii) were formerly in the employment of the offeree issuer or in the employment of an entity that was an affiliate of the offeree issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer.

Foreign take-over bid exemption

4.4 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (b) the offeror reasonably believes that security holders in Canada beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (c) the published market on which the greatest volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada;
- (d) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (e) at the same time as material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid, the material is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction;
- (f) if the bid materials referred to in paragraph (e) are not in English, a brief summary of the key terms of the bid prepared in English, and in Québec in French or French and English, is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction at the same time as the bid materials are filed and sent;
- (g) if no material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid but a notice or advertisement of the bid is published by or on behalf of the offeror in the jurisdiction where the offeree issuer is incorporated or organized, an advertisement of the bid specifying where and how security holders may obtain a copy of, or access to, the bid documents is filed and published in English, and in Québec in French or French and English, in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction.

De minimis exemption

4.5 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the number of beneficial owners of securities of the class subject to the bid in the local jurisdiction is fewer than 50;

- (b) the securities held by the beneficial owners referred to in paragraph (a) constitute, in aggregate, less than 2% of the outstanding securities of that class;
- (c) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (d) at the same time as material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid, the material is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

Division 2: Exempt Issuer Bids

Issuer acquisition or redemption exemption

4.6 An issuer bid for a class of securities is exempt from Part 2 if any of the following conditions are satisfied:

- (a) the securities are purchased, redeemed or otherwise acquired in accordance with the terms and conditions attaching to the class of securities that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or the securities are acquired to meet sinking fund or purchase fund requirements;
- (b) the purchase, redemption or other acquisition is required by the terms and conditions attaching to the class of securities or by the statute under which the issuer was incorporated, organized or continued;
- (c) the terms and conditions attaching to the class of securities contain a right of the owner to require the issuer of the securities to redeem, repurchase, or otherwise acquire the securities, and the securities are acquired under the exercise of the right.

Employee, executive officer, director and consultant exemption

4.7 An issuer bid is exempt from Part 2 if the securities are acquired from a current or former employee, executive officer, director or consultant of the issuer or of an affiliate of the issuer and, if there is a published market in respect of the securities,

- (a) the value of the consideration paid for any of the securities acquired is not greater than the market price of the securities at the date of the acquisition, determined in accordance with section 1.11, and
- (b) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the exemption provided by this paragraph does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period.

Normal course issuer bid exemptions

4.8 (1) In this section, “**designated exchange**” means the Toronto Stock Exchange, the TSX Venture Exchange or other exchange recognized or designated by the securities regulatory authorities for the purpose of this Instrument.

(2) An issuer bid that is made in the normal course through the facilities of a designated exchange is exempt from Part 2 if the bid is made in accordance with the bylaws, rules, regulations and policies of that exchange.

(3) An issuer bid that is made in the normal course on a published market, other than a designated exchange, is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer;
- (b) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired in reliance on this exemption by the issuer and any person acting jointly or in concert with the issuer within any 12-month period does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period;
- (c) the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with section 1.11, plus reasonable brokerage fees or commissions actually paid.

(4) An issuer making a bid under subsection (2) must promptly file any news release required to be issued by the designated exchange.

(5) An issuer making a bid under subsection (3) must issue and file, at least 5 days before the commencement of the bid, a news release containing the following information:

- (a) the class and number of securities or principal amount of debt securities sought;
- (b) the dates, if known, on which the issuer bid will commence and expire;
- (c) the value, in Canadian dollars, of the consideration offered per security;
- (d) the manner in which the securities will be acquired; and
- (e) the reasons for the issuer bid.

Non-reporting issuer exemption

4.9 An issuer bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the issuer is not a reporting issuer;
- (b) there is no published market for the securities that are the subject of the bid;
- (c) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who
 - (i) are in the employment of the issuer or an affiliate of the issuer, or
 - (ii) were formerly in the employment of the issuer or in the employment of an entity that was an affiliate of the issuer at the time of that employment, and who while in that employment were, and have continued after the employment to be, security holders of the issuer.

Foreign issuer bid exemption

4.10 An issuer bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (b) the offeror reasonably believes that security holders in Canada beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (c) the published market on which the greatest volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada;
- (d) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (e) at the same time as material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid, the material is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction;
- (f) if the bid materials referred to in paragraph (e) are not in English, a brief summary of the key terms of the bid prepared in English, and in Québec in French or French and English, is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction at the same time as the bid materials are filed and sent;
- (g) if no material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid but a notice or advertisement of the bid is published by or on behalf of the offeror in the jurisdiction where the offeree issuer is incorporated or organized, an advertisement of the bid specifying where and how security holders may obtain a copy of, or access to, the bid documents is filed and published in English, and in Québec in French or French and English, in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction.

De minimis exemption

4.11 An issuer bid is exempt from the requirements of Part 2 if all of the following conditions are satisfied:

- (a) the number of beneficial owners of the class of securities subject to the bid in the local jurisdiction is fewer than 50;
- (b) the securities held by the beneficial owners referred to in paragraph (a) constitute, in aggregate, less than 2% of the outstanding securities of that class;
- (c) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (d) at the same time as material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid, the material is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

PART 5: REPORTS AND ANNOUNCEMENTS OF ACQUISITIONS**Definitions and Interpretation**

5.1 (1) In this Part,

“acquiror” means a person who acquires a security, other than by way of a take-over bid or an issuer bid made in compliance with Part 2;

“acquiror’s securities” means securities of an issuer beneficially owned, or over which control or direction is exercised, on the date of the acquisition or disposition, by an acquiror or any person acting jointly or in concert with the acquiror;

“specified securities lending arrangement” means a securities lending arrangement if all of the following apply:

- (a) the material terms of the securities lending arrangement are set out in a written agreement;
- (b) the securities lending arrangement requires the borrower to pay to the lender amounts equal to all dividends or interest payments, if any, paid on the security that would have been received by the lender if the lender had held the security throughout the period beginning at the date of the transfer or loan and ending at the time the security or an identical security is transferred or returned to the lender;
- (c) the lender has established policies and procedures that require the lender to maintain a record of all securities that it has transferred or lent under securities lending arrangements;
- (d) the written agreement referred to in paragraph (a) provides for any of the following:
 - (i) the lender has an unrestricted right to recall all securities that it has transferred or lent under the securities lending arrangement, or an equal number of identical securities, before the record date for voting at any meeting of securityholders at which the securities may be voted;
 - (ii) the lender requires the borrower to vote the securities transferred or lent in accordance with the lender’s instructions;

“securities lending arrangement” means an arrangement between a lender and a borrower with respect to which both of the following apply:

- (a) the lender transfers or lends a security to the borrower;
- (b) at the time that the security is lent or transferred, the lender and the borrower reasonably expect that the borrower will, at a later date, transfer or return to the lender the security or an identical security.

(2) For the purposes of this Part, if an acquiror and one or more persons acting jointly or in concert with the acquiror acquire or dispose of securities, the securities are deemed to be acquired or disposed of, as applicable, by the acquiror.

Early warning

5.2 (1) An acquiror who acquires beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer, or securities convertible into voting or equity securities of any class of a reporting issuer, that, together with the acquiror's securities of that class, constitute 10% or more of the outstanding securities of that class, must

- (a) promptly, and, in any event, no later than the opening of trading on the business day following the acquisition, issue and file a news release containing the information required by section 3.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*, and
- (b) promptly, and, in any event, no later than 2 business days from the date of the acquisition, file a report containing the information required by section 3.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*.

(2) An acquiror who is required to make disclosure under subsection (1) must make further disclosure, in accordance with subsection (1), each time any of the following events occur:

- (a) the acquiror or any person acting jointly or in concert with the acquiror, acquires or disposes beneficial ownership of, or acquires or ceases to have control or direction over, either of the following:
 - (i) securities in an amount equal to 2% or more of the outstanding securities of the class of securities that was the subject of the most recent report required to be filed by the acquiror under subsection (1) or under this subsection;
 - (ii) securities convertible into 2% or more of the outstanding securities referred to in subparagraph (i);
- (b) there is a change in a material fact contained in the most recent report required to be filed under paragraph (1)(b) or under paragraph (a) of this subsection.

(3) An acquiror must issue and file a news release and file a report in accordance with subsection (1) if beneficial ownership of, or control or direction over, the outstanding securities of the class of securities that was the subject of the most recent report required to be filed by the acquiror under this section decreases to less than 10%.

(4) If an acquiror issues and files a news release and files a report under subsection (3), the requirements under subsection (2) do not apply unless subsection (1) applies in respect of a subsequent acquisition of beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer, or securities convertible into voting or equity securities of any class of a reporting issuer, that, together with the acquiror's securities of that class, constitute 10% or more of the outstanding securities of that class.

Moratorium provisions

5.3 (1) During the period beginning on the occurrence of an event in respect of which a report is required to be filed under section 5.2 and ending on the expiry of the first business day following the date that the report is filed, an acquiror, or any person acting jointly or in concert with the acquiror, must not acquire or offer to acquire beneficial ownership of, or control or direction over, any securities of the class in respect of which the report is required to be filed or any securities convertible into securities of that class.

(2) Subsection (1) does not apply to an acquiror that has beneficial ownership of, or control or direction over, securities that, together with the acquiror's securities of that class, constitute 20% or more of the outstanding securities of that class.

Acquisitions during bid

5.4 (1) If, after a take-over bid or an issuer bid has been made under Part 2 for voting or equity securities of a reporting issuer and before the expiry of the bid, an acquiror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the acquiror's securities of that class, constitute 5% or more of the outstanding securities of that class, the acquiror must, before the opening of trading on the next business day, issue and file a news release containing the information required by subsection (3).

(2) An acquiror must issue and file an additional news release in accordance with subsection (3) before the opening of trading on the next business day each time the acquiror, or any person acting jointly or in concert with the acquiror, acquires beneficial ownership of, or control or direction over, in aggregate, an additional 2% or more of the outstanding securities of the class of securities that was the subject of the most recent news release required to be filed by the acquiror under this section.

(3) A news release or further news release required under subsection (1) or (2) must set out

- (a) the name of the acquiror,
- (b) the number of securities of the offeree issuer that were beneficially acquired, or over which control or direction was acquired, in the transaction that gave rise to the requirement under subsection (1) or (2) to issue the news release,
- (c) the number of securities and the percentage of outstanding securities of the offeree issuer that the acquiror and all persons acting jointly or in concert with the acquiror, have beneficial ownership of, or control or direction over, immediately after the acquisition described in paragraph (b),
- (d) the number of securities of the offeree issuer that were beneficially acquired, or over which control or direction was acquired, by the acquiror and all persons acting jointly or in concert with the acquiror, since the commencement of the bid,
- (e) the name of the market in which the acquisition described in paragraph (b) took place, and
- (f) the purpose of the acquiror and all persons acting jointly or in concert with the acquiror in making the acquisition described in paragraph (b), including any intention of the acquiror and all persons acting jointly or in concert with the acquiror to increase the beneficial ownership of, or control or direction over, any of the securities of the offeree issuer.

Duplicate news release not required

5.5 If the facts in respect of which a news release is required to be filed under sections 5.2 and 5.4 are identical, a news release is required only under the provision requiring the earlier news release.

Copies of news release and report

5.6 An acquiror that files a news release or report under section 5.2 or 5.4 must promptly send a copy of each filing to the reporting issuer.

Exception

5.7 Sections 5.2, 5.3 and 5.4 do not apply to either of the following:

- (a) an acquiror that is a lender in respect of securities transferred or lent pursuant to a specified securities lending arrangement;
- (b) an acquiror that is a borrower in respect of securities or identical securities borrowed, disposed of or acquired in connection with a securities lending arrangement if all of the following apply:
 - (i) the borrowed securities are disposed of by the borrower no later than 3 business days from the date of the transfer or loan;
 - (ii) the borrower will at a later date acquire the securities or identical securities and transfer or return those securities to the lender;
 - (iii) the borrower does not intend to vote and does not vote the securities or identical securities during the period beginning on the date of the transfer or loan and ending at the time the securities or identical securities are transferred or returned to the lender.

PART 6: EXEMPTIONS

Exemption – general

6.1 (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Exemption – collateral benefit

6.2 (1) The regulator or the securities regulatory authority may decide for the purposes of section 2.24 that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to a selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into despite that section.

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision.

PART 7: TRANSITION AND COMING INTO FORCE

Transition

7.1 The take-over bid or issuer bid provisions in securities legislation that were in force immediately before May 9, 2016, continue to apply in respect of

- (a) every take-over bid and issuer bid commenced before May 9, 2016,
- (b) any take-over bid in respect of the securities of an offeree issuer subject to a take-over bid referred to in paragraph (a) commenced on or subsequent to May 9, 2016 and prior to the date of the expiry of a take-over bid referred to in paragraph (a), and
- (c) any take-over bid in respect of the securities of an issuer that issued a news release before May 9, 2016 announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, commenced on or subsequent to May 9, 2016 and prior to the date of completion or abandonment of the alternative transaction.

Coming into force

7.2 (1) Except in Ontario, this Instrument comes into force on February 1, 2008.

(2) In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

**Form 62-104F1
Take-Over Bid Circular**

Part 1 General Provisions**(a) Defined terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Incorporating information by reference

If you are qualified to file a short form prospectus under sections 2.2 to 2.7 of National Instrument 44-101 *Short Form Prospectus Distributions*, or by reason of an exemption granted by a securities regulatory authority, you may incorporate information required under item 19 to be included in your take-over bid circular by reference to another document. Clearly identify the referenced document or any excerpt of it that you incorporate into your take-over bid circular. Unless you have already filed the referenced document, you must file it with your take-over bid circular. You must also disclose that the document is on SEDAR at www.sedar.com and that, on request, you will promptly provide a copy of the document free of charge to a security holder of the offeree issuer.

(c) Plain language

Write the take-over bid circular so that readers are able to understand it and make informed investment decisions. Offerors should apply plain language principles when they prepare a take-over bid circular including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

If you use technical terms, explain them in a clear and concise manner.

(d) Numbering and headings

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the heading or numbering or follow the order of items in this Form. You do not need to refer to inapplicable items and, unless otherwise required in this Form, you may omit negative answers to items. Disclosure provided in response to any item need not be repeated elsewhere in the circular.

Part 2 Contents of Take-Over Bid Circular**Item 1. Name and description of offeror**

State the corporate name of the offeror or, if the offeror is an unincorporated entity, the full name under which it exists and carries on business, and give a brief description of its activities.

Item 2. Name of offeree issuer

State the corporate name of the offeree issuer or, if the offeree issuer is an unincorporated entity, the full name under which it exists and carries on business.

Item 3. Securities subject to the bid

State the class and number of securities that are the subject of the take-over bid and a description of the rights of the holders of any other class of securities that have a right to participate in the offer.

Item 4. Time period

State the dates on which the take-over bid will commence and expire.

Item 5. Consideration

State the consideration to be offered. If the consideration includes securities, state the particulars of the designation, rights, privileges, restrictions and conditions attaching to those securities.

Item 6. Ownership of securities of offeree issuer

State the number, designation and percentage of the outstanding securities of any class of securities of the offeree issuer beneficially owned or over which control or direction is exercised

- (a) by the offeror,
- (b) by each director and officer of the offeror, and
- (c) if known after reasonable enquiry, by
 - (i) each associate or affiliate of an insider of the offeror,
 - (ii) an insider of the offeror, other than a director or officer of the offeror, and
 - (iii) any person acting jointly or in concert with the offeror.

In each case where no securities are owned, directed or controlled, state this fact.

Item 7. Trading in securities of offeree issuer

State, if known after reasonable enquiry, the following information about any securities of the offeree issuer purchased or sold by the persons referred to in item 6 during the 6-month period preceding the date of the take-over bid:

- (a) the description of the security;
- (b) the number of securities purchased or sold;
- (c) the purchase or sale price of the security;
- (d) the date of the transaction.

If no such securities were purchased or sold, state this fact.

Item 8. Commitments to acquire securities of offeree issuer

Disclose all agreements, commitments or understandings made by the offeror, and, if known after reasonable enquiry, by the persons referred to in item 6 to acquire securities of the offeree issuer, and the terms and conditions of those agreements, commitments or understandings.

Item 9. Terms and conditions of the bid

State the terms of the take-over bid. If the obligation of the offeror to take up and pay for securities under the take-over bid is conditional, state the particulars of each condition.

Item 9.1. Minimum Tender Requirement and Mandatory Extension Period

State the following in italics and boldface type at the top of the cover page of the take-over bid circular:

No securities tendered to this bid will be taken up until (a) more than 50% of the outstanding securities of the class sought (excluding those securities beneficially owned, or over which control or direction is exercised by the offeror or any person acting jointly or in concert with the offeror) have been tendered to the bid, (b) the minimum deposit period required under applicable securities laws has elapsed, and (c) any and all other conditions of the bid have been complied with or waived, as applicable. If these criteria are met, the offeror will take up securities deposited under the bid in accordance with applicable securities laws and extend its bid for an additional minimum period of 10 days to allow for further deposits of securities.

Item 10. Payment for deposited securities

State the particulars of the method and time of payment of the consideration.

Item 11. Right to withdraw deposited securities

Describe the withdrawal rights of the security holders of the offeree issuer under the take-over bid. State that the withdrawal is made by sending a written notice to the designated depository and becomes effective on its receipt by the depository.

Item 12. Source of funds

State the source of any funds to be used for payment of deposited securities. If the funds are to be borrowed, state

- (a) the name of the lender,
- (b) the terms and financing conditions of the loan,
- (c) the circumstances under which the loan must be repaid, and
- (d) the proposed method of repayment.

Item 13. Trading in securities to be acquired

Provide a summary showing

- (a) the name of each principal market on which the securities sought are traded,
- (b) any change in a principal market that is planned following the take-over bid, including but not limited to listing or de-listing on an exchange,
- (c) where reasonably ascertainable, in reasonable detail, the volume of trading and price range of the class of the securities in the 6-month period preceding the date of the take-over bid, or, in the case of debt securities, the prices quoted on each principal market, and
- (d) the date that the take-over bid to which the circular relates was announced to the public and the market price of the securities immediately before that announcement.

Item 14. Arrangements between the offeror and the directors and officers of offeree issuer

Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeror and any of the directors or officers of the offeree issuer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or their remaining in or retiring from office if the take-over bid is successful.

Item 15. Arrangements between the offeror and security holders of offeree issuer

(1) Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeror and a security holder of the offeree issuer relating to the bid, including a description of its purpose, its date, the identity of the parties, and its terms and conditions. Disclosure with respect to each agreement, commitment or understanding, other than an agreement that a security holder will tender securities to a take-over bid made by the offeror, must include

- (a) a detailed explanation as to how the offeror determined entering into it was not prohibited by section 2.24 of the Instrument, or
- (b) disclosure of the exception to, or exemption from, the prohibition against collateral agreements relied on by the offeror and the facts supporting that reliance.

(2) If the offeror is relying on an exception to the prohibition against collateral agreements under subparagraph 2.25(1)(b)(ii) of the Instrument, and if the information is available to the offeror, disclose the review process undertaken by the independent committee of directors of the issuer and the basis on which the independent committee made its determination under clause 2.25(1)(b)(ii)(A) or (B) of the Instrument.

Item 16. Arrangements with or relating to the offeree issuer

Disclose the particulars of any agreement, commitment or understanding made between the offeror and the offeree issuer relating to the take-over bid and any other agreement, commitment or understanding of which the offeror is aware that could affect control of the offeree issuer, including an agreement with change of control provisions, a security holder agreement or a voting trust agreement that the offeror has access to and that can reasonably be regarded as material to a security holder in deciding whether to deposit securities under the bid.

Item 17. Purpose of the bid

State the purpose of the take-over bid. Disclose the particulars of any plans or proposals for

- (a) subsequent transactions involving the offeree issuer such as a going private transaction, or
- (b) material changes in the affairs of the offeree issuer, including, for example, any proposal to liquidate the offeree issuer, to sell, lease or exchange all or a substantial part of its assets, to amalgamate it with any other business organization or to make any material changes in its business, corporate structure (debt or equity), management or personnel.

Item 18. Valuation

If the take-over bid is an insider bid, as defined in applicable securities legislation, include the disclosure regarding valuations required by securities legislation.

Item 19. Securities of an offeror or other issuer to be exchanged for securities of offeree issuer

(1) If a take-over bid provides that the consideration for the securities of the offeree issuer is to be, in whole or in part, securities of the offeror or other issuer, include the financial statements and other information required in a prospectus of the issuer whose securities are being offered in exchange for the securities of the offeree issuer.

(2) For the purposes of subsection (1), provide the pro forma financial statements that would be required in a prospectus assuming that

- (a) the likelihood of the offeror completing the acquisition of securities of the offeree issuer is high, and
- (b) the acquisition is a significant acquisition for the offeror.

(3) Despite subsection (1), the financial statements of the offeree issuer are not required to be included in the circular.

Item 20. Right of appraisal and acquisition

State any rights of appraisal the security holders of the offeree issuer have under the laws or constating document governing, or contracts binding, the offeree issuer and state whether or not the offeror intends to exercise any right of acquisition the offeror may have.

Item 21. Market purchases of securities

State whether or not the offeror intends to purchase in the market securities that are the subject of the take-over bid.

Item 22. Approval of take-over bid circular

If the take-over bid is made by or on behalf of an offeror that has directors, state that the take-over bid circular has been approved and its sending has been authorized by the directors.

Item 23. Other material facts

Describe

- (a) any material facts concerning the securities of the offeree issuer, and
- (b) any other matter not disclosed in the take-over bid circular that has not previously been generally disclosed, is known to the offeror, and that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 24. Solicitations

Disclose any person retained by or on behalf of the offeror to make solicitations in respect of the take-over bid and the particulars of the compensation arrangements.

Item 25. Statement of rights

Include the following statement of rights provided under the securities legislation of the jurisdictions relating to this circular:

Securities legislation in the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages, if there is a misrepresentation in a circular or notice that is required to be delivered to those security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult a lawyer.

Item 26. Certificate

A take-over bid circular certificate form must state:

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Item 27. Date of take-over bid circular

Specify the date of the take-over bid circular.

**Form 62-104F2
Issuer Bid Circular**

Part 1 General Provisions**(a) Defined terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Incorporating information by reference

If you are qualified to file a short form prospectus under sections 2.2 to 2.7 of National Instrument 44-101 *Short Form Prospectus Distributions*, or by reason of an exemption granted by a securities regulatory authority, you may incorporate information required under item 21 to be included in your issuer bid circular by reference to another document. Clearly identify the referenced document or any excerpt of it that you incorporate into your issuer bid circular. Unless you have already filed the referenced document, you must file it with your issuer bid circular. You must also disclose that the document is on SEDAR at www.sedar.com and that, on request, you will promptly provide a copy of the document free of charge to a security holder of the issuer.

(c) Plain language

Write the issuer bid circular so that readers are able to understand it and make informed investment decisions. Issuers should apply plain language principles when they prepare an issuer bid circular including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

If you use technical terms, explain them in a clear and concise manner.

(d) Numbering and headings

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the heading or numbering or follow the order of items in this Form. You do not need to refer to inapplicable items and, unless otherwise required in this Form, you may omit negative answers to items. Disclosure provided in response to any item need not be repeated elsewhere in the circular.

Part 2 Contents of Issuer Bid Circular**Item 1. Name of issuer**

State the corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which it exists and carries on business.

Item 2. Securities subject to the bid

State the class and number of securities that are the subject of the issuer bid and a description of the rights of the holders of any other class of securities that have a right to participate in the offer. Where the number of securities sought under the bid is subject to additional purchases by the issuer for the purpose of preventing security holders from being left with less than a standard trading unit, disclose this fact.

Where the issuer intends to rely on the exception from the proportionate take up and payment requirements found in subsection 2.26(3) of the Instrument relating to “dutch auctions”, the issuer is not required to disclose the number of securities that are the subject of the issuer bid if the issuer discloses a maximum amount the issuer intends to spend making purchases pursuant to the bid.

Item 3. Time period

State the dates on which the issuer bid will commence and expire.

Item 4. Consideration

State the consideration to be offered. If the consideration includes securities, state the particulars of the designation, rights, privileges, restrictions and conditions attaching to those securities.

Item 5. Payment for deposited securities

State the particulars of the method and time of payment of the consideration.

Item 6. Right to withdraw deposited securities

Describe the right to withdraw securities deposited under the issuer bid. State that the withdrawal is made by sending a written notice to the designated depository and becomes effective on its receipt by the depository.

Item 7. Source of funds

State the source of any funds to be used for payment of deposited securities. If the funds are to be borrowed, state

- (a) the name of the lender,
- (b) the terms and financing conditions of the loan,
- (c) the circumstances under which the loan must be repaid, and
- (d) the proposed method of repayment.

Item 8. Participation

If the issuer bid is for less than all of the outstanding securities of that class, state that if a greater number or principal amount of the securities are deposited than the issuer is bound or willing to take up and pay for, the issuer will take up as nearly as may be proportionately, disregarding fractions, according to the number or principal amount of the securities deposited. To the extent that this is not the case, as permitted by securities legislation, the response to this item should be modified accordingly.

If an issuer intends to rely on one or both of the exceptions from the proportionate take up and payment requirements found in subsections 2.26 (2) and (3) of the Instrument relating to standard trading units and “dutch auctions”, describe the mechanism under which securities would be deposited and taken up without proration.

Item 9. Purpose of the bid

State the purpose for the issuer bid, and if it is anticipated that the issuer bid will be followed by a going private transaction or other transaction such as a business combination, describe the proposed transaction.

Item 10. Trading in securities to be acquired

Provide a summary showing

- (a) the name of each principal market on which the securities sought are traded,
- (b) any change in a principal market that is planned following the issuer bid,
- (c) where reasonably ascertainable, in reasonable detail, the volume of trading and price range of the class of the securities in the 6-month period preceding the date of the issuer bid, or, in the case of debt securities, the prices quoted on each principal market, and
- (d) the date that the issuer bid to which the circular relates was announced to the public and the market price of the securities of the issuer immediately before that announcement.

Item 11. Ownership of securities of issuer

State the number, designation and the percentage of the outstanding securities of any class of securities of the issuer beneficially owned or over which control or direction is exercised

- (a) by each director and officer of the issuer, and
- (b) if known after reasonable enquiry, by
 - (i) each associate or affiliate of an insider of the issuer,
 - (ii) each associate or affiliate of the issuer,
 - (iii) an insider of the issuer, other than a director or officer of the issuer, and
 - (iv) each person acting jointly or in concert with the issuer.

In each case where no securities are owned, directed or controlled, state this fact.

Item 12. Commitments to acquire securities of issuer

Disclose all agreements, commitments or understandings made by the issuer and, if known after reasonable enquiry, by the persons referred to in item 11, to acquire securities of the issuer, and the terms and conditions of those agreements, commitments or understandings.

Item 13. Acceptance of issuer bid

If known after reasonable enquiry, state the name of every person named in item 11 who has accepted or intends to accept the issuer bid and the number of securities in respect of which the person has accepted or intends to accept the issuer bid.

Item 14. Benefits from the bid

State the direct or indirect benefits to any of the persons named in item 11 of accepting or refusing the issuer bid.

Item 15. Material changes in the affairs of issuer

Disclose the particulars of any plans or proposals for material changes in the affairs of the issuer, including, for example, any contract or agreement under negotiation, any proposal to liquidate the issuer, to sell, lease or exchange all or a substantial part of its assets, to amalgamate it or to make any material changes in its business, corporate structure (debt or equity), management or personnel.

Item 16. Other benefits

If any material changes or subsequent transactions are contemplated, as described in item 9 or 15, state any specific benefit, direct or indirect, as a result of such changes or transactions to any of the persons named in item 11.

Item 17. Arrangements between the issuer and security holders

(1) Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the issuer and a security holder of the issuer relating to the bid, including a description of its purpose, its date, the identity of the parties, and its terms and conditions. Disclosure with respect to each agreement, commitment or understanding, other than an agreement that a security holder will tender securities to an issuer bid, must include

- (a) a detailed explanation as to how the issuer determined entering into it was not prohibited by section 2.24 of the Instrument, or
- (b) disclosure of the exception to, or exemption from, the prohibition against collateral agreements relied on by the issuer and the facts supporting that reliance.

(2) If the issuer is relying on an exception to the prohibition against collateral agreements under subparagraph 2.25(1)(b)(ii) of the Instrument, and if the information is available to the issuer, disclose the review process undertaken by the independent committee of directors of the issuer and the basis on which the independent committee made its determination under clause 2.25(1)(b)(ii)(A) or (B) of the Instrument.

Item 18. Previous purchases and sales

State the following information about any securities of the issuer purchased or sold by the issuer during the twelve months preceding the date of the issuer bid, excluding securities purchased or sold pursuant to the exercise of employee stock options, warrants and conversion rights:

- (a) the description of the security,
- (b) the number of securities purchased or sold,
- (c) the purchase or sale price of the security, and
- (d) the date and purpose of each transaction.

If no securities were purchased or sold, state this fact.

Item 19. Financial statements

If the most recently available interim financial report is not included, include a statement that the most recent interim financial report will be sent without charge to any security holder requesting them.

Item 20. Valuation

If a valuation is required by applicable securities legislation, include the disclosure regarding valuations required by securities legislation.

Item 21. Securities of issuer to be exchanged for others

If an issuer bid provides that the consideration for the securities of the issuer is to be, in whole or in part, different securities of the issuer, include the financial and other information prescribed for a prospectus of the issuer.

Item 22. Approval of issuer bid circular

State that the issuer bid circular has been approved by the issuer's directors, disclosing the name of any individual director of the issuer who has informed the directors in writing of their opposition to the issuer bid and that the delivery of the issuer bid circular to the security holders of the issuer has been authorized by the issuer's directors.

If the issuer bid is part of a transaction or to be followed by a transaction required to be approved by minority security holders, state the nature of the approval required.

Item 23. Previous distribution

If the securities of the class subject to the issuer bid were distributed during the 5 years preceding the issuer bid, state the distribution price per share and the aggregate proceeds received by the issuer or selling security holder.

Item 24. Dividend policy

State the frequency and amount of dividends with respect to shares of the issuer during the 2 years preceding the date of the issuer bid, any restrictions on the issuer's ability to pay dividends and any plan or intention to declare a dividend or to alter the dividend policy of the issuer.

Item 25. Tax consequences

Provide a general description of the income tax consequences in Canada of the issuer bid to the issuer and to the security holders of any class affected.

Item 26. Expenses of bid

Provide a statement of the expenses incurred or to be incurred in connection with the issuer bid.

Item 27. Right of appraisal and acquisition

State any rights of appraisal the security holders of the issuer have under the laws or constating documents governing, or contracts binding, the issuer and state whether or not the issuer intends to exercise any right of acquisition the issuer may have.

Item 28. Statement of rights

Include the following statement of rights provided under the securities legislation of the jurisdictions relating to this circular:

Securities legislation in the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages, if there is a misrepresentation in a circular or notice that is required to be delivered to those security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult a lawyer.

Item 29. Other material facts

Describe

- (a) any material facts concerning the securities of the issuer, and
- (b) any other matter not disclosed in the issuer bid circular that has not previously been generally disclosed, is known to the issuer, and that would reasonably be expected to affect the decision of the security holders of the issuer to accept or reject the offer.

Item 30. Solicitations

Disclose any person retained by or on behalf of the issuer to make solicitations in respect of the issuer bid and the particulars of the compensation arrangements.

Item 31. Certificate

An issuer bid circular certificate form must state:

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Item 32. Date of issuer bid circular

Specify the date of the issuer bid circular.

Form 62-104F3
Directors' Circular

Part 1 General Provisions**(a) Defined terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Plain language

Write the directors' circular so that readers are able to understand it and make informed investment decisions. Directors should apply plain language principles when they prepare a directors' circular including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

If you use technical terms, explain them in a clear and concise manner.

(c) Numbering and headings

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the heading or numbering or follow the order of items in this Form. You do not need to refer to inapplicable items and, unless otherwise required in this Form, you may omit negative answers to items. Disclosure provided in response to any item need not be repeated elsewhere in the circular.

Part 2 Contents of Directors' Circular**Item 1. Name of offeror**

State the corporate name of the offeror or, if the offeror is an unincorporated entity, the full name under which it exists and carries on business.

Item 2. Name of offeree issuer

State the corporate name of the offeree issuer or, if the offeree issuer is an unincorporated entity, the full name under which it exists and carries on business.

Item 3. Names of directors of the offeree issuer

State the name of each director of the offeree issuer.

Item 4. Ownership of securities of offeree issuer

State the number, designation and the percentage of the outstanding securities of any class of securities of the offeree issuer beneficially owned or over which control or direction is exercised

- (a) by each director and officer of the offeree issuer, and
- (b) if known after reasonable enquiry, by
 - (i) each associate or affiliate of an insider of the offeree issuer,
 - (ii) each associate or affiliate of the offeree issuer,
 - (iii) an insider of the offeree issuer, other than a director or officer of the offeree issuer, and
 - (iv) each person acting jointly or in concert with the offeree issuer.

In each case where no securities are owned, directed or controlled, state this fact.

Item 5. Acceptance of take-over bid

If known after reasonable enquiry, state the name of every person named in item 4 who has accepted or intends to accept the offer and the number of securities in respect of which such person has accepted or intends to accept the offer.

Item 6. Ownership of securities of offeror

If a take-over bid is made by or on behalf of an offeror that is an issuer, state the number, designation and percentage of the outstanding securities of any class of securities of the offeror beneficially owned or over which control or direction is exercised

- (a) by the offeree issuer,
- (b) by each director and officer of the offeree issuer, and
- (c) if known after reasonable enquiry, by
 - (i) each associate or affiliate of an insider of the offeree issuer,
 - (ii) each affiliate or associate of the offeree issuer, and
 - (iii) an insider of the offeree issuer, other than a director or officer of the offeree issuer, and
 - (iv) each person acting jointly or in concert with the offeree issuer.

In each case where no securities are so owned, directed or controlled, state this fact.

Item 7. Relationship between the offeror and the directors and officers of the offeree issuer

Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeror and any of the directors or officers of the offeree issuer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or their remaining in or retiring from office if the take-over bid is successful. State also whether any directors or officers of the offeree issuer are also directors or officers of the offeror or any subsidiary of the offeror and identify those persons.

Item 8. Arrangements between offeree issuer and officers and directors

Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeree issuer and any of the directors or officers of the offeree issuer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or their remaining in or retiring from office if the take-over bid is successful.

Item 9. Arrangements between the offeror and security holders of offeree issuer

(1) If not already disclosed in the take-over bid circular, disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeror and a security holder of the offeree issuer relating to the bid, including a description of its purpose, its date, the identity of the parties, and its terms and conditions. Disclosure with respect to each agreement, commitment or understanding, other than an agreement that a security holder will tender securities to a take-over bid made by the offeror, must include

- (a) a detailed explanation as to how the offeror determined entering into it was not prohibited by section 2.24 of the Instrument, or
- (b) disclosure of the exception to, or exemption from, the prohibition against collateral agreements relied on by the offeror and the facts supporting that reliance.

(2) If the offeror is relying on an exception to the prohibition against collateral agreements under subparagraph 2.25(1)(b)(ii) of the Instrument, and if not already disclosed in the take-over bid circular, disclose the review process undertaken by the independent committee of directors of the issuer and the basis on which the independent committee made its determination under clause 2.25(1)(b)(ii)(A) or (B) of the Instrument.

Item 10. Interests of directors and officers of the offeree issuer in material transactions with offeror

State whether any director or officer of the offeree issuer and their associates and, if known to the directors or officers after reasonable enquiry, whether any person who owns more than 10 % of any class of equity securities of the offeree issuer for the time being outstanding has any interest in any material transaction to which the offeror is a party, and if so, state particulars of the nature and extent of such interest.

Item 11. Trading by directors, officers and other insiders

(1) State the number of securities of the offeree issuer traded, the purchase or sale price and the date of each transaction during the 6-month period preceding the date of the directors' circular by the offeree issuer and each director, officer or other insider of the offeree issuer, and, if known after reasonable enquiry, by

- (a) each associate or affiliate of an insider of the offeree issuer,
- (b) each affiliate or associate of the offeree issuer, and
- (c) each person acting jointly or in concert with the offeree issuer.

(2) Disclose the number and price of securities of the offeree issuer of the class of securities subject to the bid or convertible into securities of that class that have been issued to the directors, officers and other insiders of the offeree issuer during the 2-year period preceding the date of the circular.

Item 12. Additional information

If any information required to be disclosed by the take-over bid circular prepared by the offeror has been presented incorrectly or is misleading, supply any additional information which will make the information in the circular correct or not misleading.

Item 13. Material changes in the affairs of offeree issuer

State the particulars of any information known to any of the directors or officers of the offeree issuer that indicates any material change in the affairs of the offeree issuer since the date of the last published interim financial report or annual financial statements of the offeree issuer.

Item 14. Other material information

State the particulars of any other information known to the directors but not already disclosed in the directors' circular that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 15. Recommending acceptance or rejection of the bid

Include either a recommendation to accept or reject the take-over bid and the reasons for such recommendation or a statement that the directors are unable to make or are not making a recommendation. If no recommendation is made, state the reasons for not making a recommendation. If the directors of an offeree issuer are considering recommending acceptance or rejection of a take-over bid after the sending of the directors' circular, state that fact.

Item 16. Response of offeree issuer

Describe any transaction, directors' resolution, agreement in principle or signed contract of the offeree issuer in response to the bid. Disclose whether there are any negotiations underway in response to the bid, which relate to or would result in

- (a) an extraordinary transaction such as a merger or reorganization involving the offeree issuer or a subsidiary,
- (b) the purchase, sale or transfer of a material amount of assets by the offeree issuer or a subsidiary,
- (c) a competing take-over bid,
- (d) a bid by the offeree issuer for its own securities or for those of another issuer, or
- (e) any material change in the present capitalization or dividend policy of the offeree issuer.

If there is an agreement in principle, give full particulars.

Item 17. Approval of directors' circular

State that the directors' circular has been approved and its sending has been authorized by the directors of the offeree issuer.

Item 18. Statement of rights

Include the following statement of rights provided under the securities legislation of the jurisdictions relating to this circular:

Securities legislation in the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages, if there is a misrepresentation in a circular or notice that is required to be delivered to those security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult a lawyer.

Item 19. Certificate

A directors' circular certificate form must state:

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Item 20. Date of directors' circular

Specify the date of the directors' circular.

Form 62-104F4
Director's or Officer's Circular

Part 1 General Provisions**(a) Defined terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Plain language

Write the director's or officer's circular so that readers are able to understand it and make informed investment decisions. Directors and officers should apply plain language principles when they prepare a director's or officer's circular including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

If you use technical terms, explain them in a clear and concise manner.

(c) Numbering and headings

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the heading or numbering or follow the order of items in this Form. You do not need to refer to inapplicable items and, unless otherwise required in this Form, you may omit negative answers to items. Disclosure provided in response to any item need not be repeated elsewhere in the circular.

Part 2 Contents of Director's or Officer's Circular**Item 1. Name of offeror**

State the corporate name of the offeror or, if the offeror is an unincorporated entity, the full name under which it exists and carries on business.

Item 2. Name of offeree issuer

State the corporate name of the offeree issuer or, if the offeree issuer is an unincorporated entity, the full name under which it exists and carries on business.

Item 3. Name of director or officer of offeree issuer

State the name of each director or officer delivering the circular.

Item 4. Ownership of securities of offeree issuer

State the number, designation and percentage of the outstanding securities of any class of securities of the offeree issuer beneficially owned or over which control or direction is exercised

- (a) by the director or officer, and
- (b) if known after reasonable enquiry, by the associates of the director or officer.

In each case where no securities are so owned, directed or controlled, state this fact.

Item 5. Acceptance of bid

State whether the director or officer of the offeree issuer and, if known after reasonable enquiry whether any associate of such director or officer, has accepted or intends to accept the offer and state the number of securities in respect of which the director or officer, or any associate, has accepted or intends to accept the offer.

Item 6. Ownership of securities of offeror

If a take-over bid is made by or on behalf of an issuer, state the number, designation and percentage of the outstanding securities of any class of securities of the offeror beneficially owned or over which control or direction is exercised

- (a) by the director or officer, or
- (b) if known after reasonable enquiry, by the associates of the director or officer.

In each case where no securities are so owned, directed or controlled, state this fact.

Item 7. Arrangements between offeror and director or officer

Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeror and the director or officer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or the director or officer remaining in or retiring from office if the take-over bid is successful. State whether the director or officer is also a director or officer of the offeror or any subsidiary of the offeror.

Item 8. Arrangements between offeree issuer and director or officer

Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the offeree issuer and the director or officer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or his or her remaining in or retiring from office if the take-over bid is successful.

Item 9. Interests of director or officer in material transactions with offeror

State whether the director or officer or the associates of the director or officer have any interest in any material transaction to which the offeror is a party, and if so, state the particulars of the nature and extent of such interest.

Item 10. Additional information

If any information required to be disclosed by the take-over bid circular prepared by the offeror or the directors' circular prepared by the directors has been presented incorrectly or is misleading, supply any additional information within the knowledge of the director or officer which would make the information in the take-over bid circular or directors' circular correct or not misleading.

Item 11. Material changes in the affairs of offeree issuer

State the particulars of any information known to the director or officer that indicates any material change in the affairs of the offeree issuer since the date of the last published interim financial report or annual financial statements of the offeree issuer and not generally disclosed or in the opinion of the director or officer not adequately disclosed in the take-over bid circular or directors' circular.

Item 12. Other material information

State the particulars of any other information known to the director or officer but not already disclosed in the director's or officer's circular that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 13. Recommendation

State the recommendation of the director or officer and the reasons for the recommendation.

Item 14. Statement of rights

Include the following statement of rights provided under the securities legislation of the jurisdictions relating to this circular:

Securities legislation of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages if there is a misrepresentation in a circular or notice that is required to be delivered to those security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult a lawyer.

Item 15. Certificate

Include a certificate in the following form signed by or on behalf of each director or officer delivering the circular:

The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Item 16. Date of director's or officer's circular

Specify the date of the director's or officer's circular.

Form 62-104F5
Notice of Change or Notice of Variation

Part 1 General Provisions**(a) Defined terms**

If a term is used but not defined in this Form, refer to Part 1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Plain language

Write the notice of change or notice of variation so that readers are able to understand it and make informed investment decisions. Plain language principles should be applied when preparing a notice of change or notice of variation including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

If you use technical terms, explain them in a clear and concise manner.

(c) Numbering and headings

The numbering, headings and ordering of items included in this Form are guidelines only. You do not need to include the heading or numbering or follow the order of items in this Form. You do not need to refer to inapplicable items and, unless otherwise required in this Form, you may omit negative answers to items. Disclosure provided in response to any item need not be repeated elsewhere in the circular.

Part 2 Contents of Notice of Change or Notice of Variation**Item 1. Name of offeror**

State the corporate name of the offeror or, if the offeror is an unincorporated entity, the full name under which it exists and carries on business.

Item 2. Name of offeree issuer (if applicable)

State the corporate name of the offeree issuer or, if the offeree issuer is an unincorporated entity, the full name under which it exists and carries on business.

Item 3. Particulars of notice of change or notice of variation

(1) A notice of change required under section 2.11 of the Instrument must contain

- (a) a description of the change in the information contained in
 - (i) the take-over bid circular or issuer bid circular, and
 - (ii) any notice of change previously delivered under section 2.11,
- (b) the date of the change,
- (c) the date up to which securities may be deposited,
- (d) the date by which securities deposited must be taken up by the offeror, and
- (e) a description of the rights of withdrawal that are available to security holders.

(2) A notice of variation required under section 2.12 of the Instrument must contain

- (a) a description of the variation in the terms of the take-over bid or issuer bid,
- (a.1) if one of the terms referred to in paragraph (a) is the mandatory 10-day extension period required pursuant to paragraph 2.31.1(a) of the Instrument, the number of securities deposited under the take-over bid and not withdrawn as at the date of the variation,
- (b) the date of the variation,
- (c) the date up to which securities may be deposited,
- (d) the date by which securities deposited must be taken up by the offeror,
- (e) if the date referred to in paragraph (d) is not known, a description of the legal requirements regarding the timing of take up of securities deposited under the bid,
- (f) a description of when payment will be made for deposited securities in relation to the time in which they are taken up by the offeror, and
- (g) a description of the rights of withdrawal that are available to security holders.

(3) A notice of change required under section 2.18 or subsection 2.20(2) of the Instrument must contain, as applicable, a description of the change in the information contained in

- (a) the directors' circular,
- (b) any notice of change previously delivered under section 2.18,
- (c) the director's or officer's circular, or 3
- (d) any notice of change previously delivered under subsection 2.20(2).

Item 4. Statement of rights

Include the following statement of rights provided under the securities legislation of the jurisdictions relating to this notice:

Securities legislation of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages if there is a misrepresentation in a circular or notice that is required to be delivered to those security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult a lawyer.

Item 5. Certificate

Include the signed certificate required in the bid circular, directors' circular or director's or officer's circular, amended to refer to the initial circular and to all subsequent notices of change or notices of variation.

Item 6. Date of notice of change or notice of variation

Specify the date of the notice of change or notice of variation.

SCHEDULE 2

**REPEAL OF
ONTARIO SECURITIES COMMISSION RULE 62-504 TAKE-OVER BIDS AND ISSUER BIDS**

- 1. *Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids is repealed.***
2. This Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

SCHEDULE 3

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 13-502 FEES

1. ***Ontario Securities Commission Rule 13-502 Fees is amended by this Instrument.***
2. ***Appendix C is amended***
 - (a) ***by replacing “subsection 94.2(2), (3) or (4) of the Act” with “subsection 2.10(2),(3) or (4) of NI 62-104” in item 1 of the “Document or Activity” column of Item G, and***
 - (b) ***by replacing “section 94.5 of the Act” with “section 2.13 of NI 62-104” in item 2 of the “Document or Activity” column of Item G.***
3. This Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

SCHEDULE 4**AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 14-501 DEFINITIONS**

1. ***Ontario Securities Commission Rule 14-501 Definitions is amended by this Instrument.***
2. ***Subsection 1.1(2) is amended by repealing the definition of “offeree issuer” and “published market”.***
3. This Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

SCHEDULE 5

**AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 48-501 *TRADING DURING
DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS***

1. ***Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions is amended by this Instrument.***
2. ***Paragraph 3.2(c) is amended by replacing “clauses 93(3)(a) through (d) of the Act” with “sections 4.6 and 4.7 of National Instrument 62-104 Take-Over Bids and Issuer Bids”.***
3. This Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

SCHEDULE 6

**AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 71-801
IMPLEMENTING THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM**

1. ***Ontario Securities Commission Rule 71-801 Implementing the Multijurisdictional Disclosure System is amended by this Instrument.***

2. ***Section 1.1 is amended by adding the following subsection:***

(3) In this Rule, “NI 62-104” means “National Instrument 62-104 *Take-Over Bids and Issuers Bids*”.

3. ***Part 3 is replaced with the following:***

3.1 Application of the Act and regulations to bids — (1) The following provisions of NI 62-104 do not apply to a bid made in compliance with Part 12 of NI 71-101:

- (a) sections 1.6, 2.1 to 2.3, and 2.5 to 2.7, clause 2.8(b), subsections 2.10(2), (3) and (4), subsections 2.11(1.1) and (5), subsections 2.12(1.1), (3), (3.1), (4), (5), and (6), sections 2.13 to 2.16, 2.23 to 2.34; and
- (b) section 2.4 unless security holders of the offeree issuer whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) through (4) of NI 71-101, hold 20% or more of a class of securities that is the subject of the bid;

(2) The following provisions of NI 62-104 apply to a bid made in compliance with Part 12 of NI 71-101:

- (a) clause 2.8(a), section 2.9, subsections 2.10(1), 2.11 (2), (3) and (4), and subsection 2.12(2);
- (b) subsection 2.11(1), except the requirement to send a notice of change to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario; and
- (c) subsection 2.12(1), except the requirement to send a notice of variation to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario.

3.2 Application of the Act and regulations to MJDS directors' circulars and MJDS individual director's or officer's circulars — (1) Subsections 2.17(2), and (3), sections 2.18 and 2.19, subsection 2.20(6) and sections 2.21 and 2.22 do not apply to the directors or the individual directors or officers of an offeree issuer who elect to comply with Part 12 of NI 71-101 instead of provisions of NI 62-104 otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101.

(2) The following provisions of NI 62-104 apply to the directors or the individual directors or officers of an offeree issuer who elect to comply with Part 12 of NI 71-101 instead of provisions of NI 62-104 otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101:

- (a) subsections 2.17(1) and 2.20(1), except the requirement to send a directors' circular or an individual director's or officer's circular to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario;
- (b) subsections 2.18(1) and 2.20(2), except the requirement to send notice of change to holders of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario;
- (c) subsections 2.20(4) and (5), except the requirement to send a copy of an individual director's or officer's circular and a notice of change to holders of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario; and

(d) subsections 2.17(4), 2.18(2), 2.20(3) and (7)..

4. This Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

SCHEDULE 7

**AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 71-802 IMPLEMENTING NATIONAL INSTRUMENT 71-102 CONTINUOUS
DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS**

1. ***Ontario Securities Commission Rule 71-802 Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers is amended by this Instrument.***
2. ***Section 1.1 is amended by adding the following definition:***

“NI 62-104” means National Instrument 62-104 *Take-Over Bids and Issuer Bids*;
3. ***Section 2.3 is amended by replacing “sections 101 and 102 of the Act” with “section 5.2 of NI 62-104”.***
4. ***Section 3.3 is amended by replacing “sections 101 and 102 of the Act” with “section 5.2 of NI 62-104”.***
5. This Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

SCHEDULE 8

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 91-502 *TRADES IN RECOGNIZED OPTIONS*

1. ***Ontario Securities Commission Rule 91-502 Trades in Recognized Options is amended by this Instrument.***
2. ***Section 1.1 is amended by replacing*** “has the meaning ascribed to that term in subsection 89(1) of the Act” ***with*** “means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets” ***in the definition of*** “equity security”.
3. This Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.