

6.1.2 Proposed Amendments to MI 62-104 Take-Over Bids and Issuer Bids, NP 62-203 Take-Over Bids and Issuer Bids, and NI 62-103 Early Warning System and Related Take-Over Bid and Insider Reporting Issues

CSA NOTICE AND REQUEST FOR COMMENT

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

AND

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

AND

**NATIONAL INSTRUMENT 62-103 EARLY WARNING SYSTEM AND
RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES**

March 13, 2013

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a 90-day comment period proposed amendments and changes to:

- Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104),
- National Policy 62-203 *Take-Over Bids and Issuer Bids* (NP 62-203), and
- National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) (collectively, the Proposed Amendments).

The text of the Proposed Amendments is contained in Annexes A through C of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

The objective of the Proposed Amendments is to provide greater transparency about significant holdings of issuers' securities by proposing an early warning reporting threshold of 5%, requiring disclosure of both increases and decreases in ownership of 2% or more of securities, and enhancing the content of the disclosure in the early warning news releases and reports required to be filed. We are also proposing changes so that certain "hidden ownership" and "empty voting" arrangements are disclosed.

The Proposed Amendments include amendments to the early warning reporting requirements in MI 62-104 which applies in all provinces and territories of Canada except Ontario. In Ontario, we anticipate that amendments to the *Securities Act* (Ontario) (Ontario Act) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (OSC Rule 62-504) will be proposed in order to allow the substance of the Proposed Amendments to apply fully in Ontario.

We are not proposing comprehensive reforms to the alternative monthly reporting (AMR) framework in NI 62-103 applicable to eligible institutional investors (EIs). However, some of the Proposed Amendments will apply to an EI reporting under the AMR regime and we propose a change to the criteria for disqualification from AMR. We will consider more comprehensive changes to the AMR regime as part of a future review.

Background

The early warning system was introduced in Canada in 1987 as a result of proposals made by the Securities Industry Committee on Take-over Bids (the Industry Committee).¹

The Industry Committee believed that a 20% threshold was appropriate for regulating take-over bids in Canada but at the same time recognized that the accumulation of a holding of 10% should be disclosed as it could be a signal of a potential acquisition of control.

In June 1990, the CSA published for comment a proposal to reduce the take-over bid threshold to 10% and the early warning disclosure threshold from 10% to 5%.

Although the CSA presented the decrease in the early warning threshold as possibly being dependent on a decrease of the take-over bid threshold, in our view, the take-over bid threshold is not the only relevant factor in determining the early warning threshold.

In the 1990 Request for Comment, the CSA stated that "the reduction in the early warning disclosure threshold from 10% to 5% is being proposed by the CSA to increase the level of disclosure available to securities regulators and the public."²

Comments received were mixed. Many agreed with the decrease to 5% but expressed practical concerns about the compliance burden on passive investors. It was suggested that the CSA consider adopting a disclosure regime for passive institutional investors similar to the one available in the U.S.

In September 1998, the CSA published for comment proposed NI 62-103. The primary purpose of proposed NI 62-103 was to provide exemptions from the early warning requirements and the insider reporting requirement to certain institutional investors that have a "passive intent" with respect to their ownership or control of securities of reporting issuers and to permit those persons to disaggregate securities that they own or control for purposes of those requirements in certain circumstances.

The Notice that accompanied proposed NI 62-103 described the rationale for the early warning system as follows. We believe that rationale is still valid today.

The early warning system contained in the securities legislation of most jurisdictions requires disclosure of holdings of securities that exceed certain prescribed thresholds in order to ensure that the market is advised of accumulations of significant blocks of securities that may influence control of a reporting issuer. Dissemination of this information is important because the securities acquired can be voted or sold, and the accumulation of the securities may signal that a take-over bid for the issuer is imminent. In addition, accumulations may be material information to the market even when not made to change or influence control of the issuer. Significant accumulations of securities may affect investment decisions as they may effectively reduce the public float, which limits liquidity and may increase price volatility of the stock. Market participants also may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions. The mere identity and presence of an institutional shareholder may be material to some investors.³

A number of market participants have recently expressed concerns with the current early warning regime. In particular, they consider that the reporting threshold of 10% ownership is too high and question the adequacy of the disclosure included in the early warning reports filed in Canada, specifically with respect to disclosure about the purpose of the transaction.

Hidden Ownership and Empty Voting

In the Notice and Request for Comment (the Insider Reporting Notice) published in connection with proposed National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104)⁴, we identified concerns about the potential use of derivatives to avoid early warning requirements, insider reporting requirements and similar securities law disclosure requirements that are based on the concepts of beneficial ownership and control or direction. Sophisticated investors may be able to use derivatives to accumulate substantial economic positions in public companies without public disclosure (this is

¹ Report of the Securities Industry Committee on Take-over Bids, *The Regulation of Take-over Bids in Canada: Premium Private Agreement Transactions* (November 1983), at p.46.

² Request for Comment, *Proposed Changes to Provincial Securities Legislation – Take-Over Bids*, June 8, 1990.

³ Notice of National Instrument 62-103 *The Early Warning System and Take-Over Bid and Insider Reporting Issues*, September 4, 1998. NI 62-103 came into force across Canada on March 15, 2000.

⁴ Notice and Request for Comment, *Proposed National Instrument 55-104 Insider Reporting Requirements and Exemptions*, Part 10 Future Initiatives – Hidden Ownership and Empty Voting, December 18, 2008.

referred to as “hidden ownership”). We also described in the Insider Reporting Notice issues relating to the disclosure of arrangements where an investor may utilize derivatives or securities lending arrangements to hold voting rights in respect of an issuer although the investor may not have an equivalent economic stake in the issuer (this is referred to as “empty voting”).

We indicated in the Insider Reporting Notice that we were reviewing reform proposals to address hidden ownership concerns in other jurisdictions and were considering developing similar proposals for Canada.

We received a number of comments in support of developing comparable proposals for Canada, including comments from issuers, investors, law firms and investor protection organizations. No commenters opposed our proceeding with this initiative.⁵

NI 55-104 came into force across Canada in April 2010. Since then, we have continued to monitor developments in other major jurisdictions around the world. A number of jurisdictions have now introduced rules that require investors to aggregate and disclose derivatives for reporting purposes.⁶

Substance and Purpose

Reporting Threshold

The basic requirements of the early warning regime are set out in Part 5 of MI 62-104 and sections 102 and 102.1 of the Ontario Act and Part 7 of OSC Rule 62-504. Under the early warning regime, if a person acquires beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer that would constitute 10% or more of the outstanding securities of that class, the person must issue and file a news release promptly and file a report within 2 business days. A person must also issue a news release and file a report for additional acquisitions of 2% or more of the outstanding securities. Other than under the AMR regime for EIs, the current early warning regime does not specifically require disclosure of decreases in ownership of, or control or direction over, voting or equity securities.

The early warning regulatory framework requires disclosure of holdings of securities to advise the market of accumulations of significant blocks of securities that may influence control of a reporting issuer. Dissemination of this information is important because the securities acquired can be voted, or the accumulation of the securities may signal that a take-over bid for the reporting issuer is possible.

In our view, our current threshold of 10%, introduced in 1987, does not respond to the reality of increasing shareholder activism and to the ability of a shareholder holding 5% to requisition a shareholders' meeting. The objective of early warning disclosure is not only to predict possible take-over bids but also to anticipate proxy-related matters where a threshold of 5% may be critical. Our early warning disclosure requirements should recognize the realities of our current markets where a significant accumulation of securities is relevant for purposes beyond signaling potential take-over-bids.

We propose to decrease the reporting threshold from 10% to 5%. We believe this lower threshold is appropriate because information regarding the accumulation of significant blocks of securities is relevant for a number of reasons in addition to signaling a potential take-over bid for the issuer, such as:

- it may be possible for a shareholder at the 5% level to influence control of an issuer;
- significant shareholding is relevant for proxy-related matters (for example, under corporate legislation, a shareholder can generally requisition a shareholders' meeting if it holds 5% of an issuer's voting securities);
- market participants may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions;
- significant accumulations of securities may affect investment decisions;
- the identity and presence of an institutional shareholder may be material to some investors;

⁵ Notice of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, Appendix C Summary of Comments and CSA Responses, January 22, 2010.

⁶ For example, in the United Kingdom, the Financial Services Authority introduced new rules, effective June 2009, that generally require investors to aggregate their holdings of shares, “qualifying instruments” and “financial instruments with a similar economic effect to qualifying instruments” (e.g., “contracts for difference”) in relation to most UK-listed issuers in determining whether they have crossed a disclosure threshold. See Financial Services Authority, *Disclosure of Contracts for Difference – Questions & Answers: Version 3* (November 2010), available at <http://www.fsa.gov.uk/pubs/ukla/disclosure.pdf>.

- a lower early warning reporting threshold will provide all market participants with greater information about significant shareholders and thereby enhance market transparency;
- a 5% threshold would be consistent with the standard of several major foreign jurisdictions; and
- changes in corporate governance practices have increased the need for issuers to communicate directly with beneficial owners. A lower threshold would provide reporting issuers greater visibility into their shareholder base and a greater ability to engage with significant shareholders earlier. It would also allow shareholders to communicate among themselves earlier.

We do not propose to amend the threshold for reporting further acquisitions; it remains at 2% and a change in a material fact contained in an earlier report.

However, to provide greater certainty to the market, we propose to require disclosure of a 2% decrease in ownership. Currently, the early warning regime does not explicitly require a person to file a further early warning report where there is a decrease in ownership; instead, a person must determine whether the decrease in ownership is a change in a material fact and file a further report based on that assessment. We think that decreases in ownership of an issuer are as relevant to the market as increases in ownership and should be disclosed.

Enhanced Disclosure

The purpose of early warning reporting is to compel the release of information with respect to changes in the ownership of, or control or direction over, a reporting issuer's voting or equity securities to allow the market to review and assess the potential market impact of the change. Investors must be given sufficient information to be able to effectively evaluate the impact. In our view, disclosure to investors of a change that may influence or affect control is essential for market transparency and investor confidence.

Persons subject to the early warning requirements disclose the purpose of the change as part of their early warning news release and report. Concerns have been expressed about the adequacy of the disclosure included in the early warning reports filed in Canada, particularly with respect to disclosure about the purpose of the transaction.

We have found that the disclosure is often inadequate and does not sufficiently inform investors. In our view, more detailed disclosure of, for example, the intentions of the person acquiring securities and the purpose of the acquisition would enhance the substance and quality of early warning reporting.

We think we should require enhanced early warning disclosure. While persons subject to the early warning requirements are required to disclose the purpose of the acquisition as part of their early warning news release and report, we have found that this disclosure often consists of boilerplate language that provides little useful information for the market. We propose to amend our disclosure requirements and specify disclosure of the type of information we expect about the purpose of the transaction. We believe that more detailed disclosure of the intentions of the person acquiring securities and the purpose of the acquisition is required for the market to properly evaluate the particulars of the acquisition.

Hidden Ownership and Empty Voting

Derivatives and Related Financial Instruments

We believe that changes to the scope of the early warning framework are required in order to ensure proper transparency of securities ownership in light of the increased use of derivatives by investors.

A sophisticated investor may be able, through the use of equity swaps or similar derivative arrangements, to accumulate a substantial economic interest in an issuer without public disclosure and then potentially convert this interest into voting securities in time to exercise a vote (this is referred to as "hidden ownership").

It is also possible for an investor, through derivatives or securities lending arrangements, to hold voting rights in an issuer and possibly influence the outcome of a shareholder vote, although it may not have an equivalent economic stake in the issuer (this is referred to as "empty voting").

These types of arrangements may not be disclosed under current securities law requirements since these requirements are generally based on the concept of beneficial ownership of, or control or direction over, voting or equity securities. The disclosure of these arrangements would be helpful in maintaining transparency and market integrity.

We are therefore proposing amendments intended to include certain types of derivatives that affect an investor's total economic interest in an issuer for the purposes of determining the early warning reporting threshold trigger. For the purposes of early

warning reporting disclosure, the Proposed Amendments would require disclosure of an investor's economic interest in an issuer as well as its voting interest in the case of securities lending arrangements. An investor would also have to disclose that it has entered into related financial instruments and other arrangements with respect to the securities of the issuer, if this is the case.

Early Warning Reporting Trigger

We propose to amend the early warning reporting trigger in MI 62-104 and section 102.1 of the Ontario Act (through a new definition of "equity equivalent derivative" and a deeming provision) so that an investor would be required to include within the early warning calculation certain equity derivative positions that are *substantially equivalent* in economic terms to conventional equity holdings.⁷

Our intention is to ensure that, for purposes of the early warning reporting threshold only, an investor would be deemed to have control or direction over voting or equity securities referenced in an "equity equivalent derivative".

The "equity equivalent derivative" concept would capture derivatives that substantially replicate the economic consequences of ownership. We would generally consider a derivative to substantially replicate the economic consequences of ownership of a specified number of reference securities if a dealer or other market participant that took a short position on the derivative could substantially hedge its obligations under the derivative by holding 90% or more of the specified number of reference securities.

An "equity equivalent derivative" would not encompass partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). While the use of partial-exposure instruments could raise policy concerns in certain circumstances, we are mindful that the introduction of a requirement to include partial-exposure instruments may render the early warning threshold calculation unduly complex and onerous for investors. We are not persuaded at this time that the benefits to market participants through inclusion of partial exposure instruments in the early warning threshold calculation would outweigh the costs to market participants in terms of additional complexity. We nonetheless remind market participants that the securities regulatory authorities retain public interest jurisdiction to respond to activities involving partial-exposure instruments that may be considered abusive.

Examples of instruments that we intend to come within the definition of "equity equivalent derivative" include total return swaps (TRSs), contracts for difference (CFDs), and other derivatives that provide the party with the notional "long" position with an economic interest that is substantially equivalent to the economic interest the party would have if the party held the securities directly.

For example, if an investor holds 4.9% of the common shares of a public company and then enters into 3 cash-settled TRSs with 3 dealers each representing the economic equivalent of a 3% ownership position, the investor would have an economic position equivalent to a 13.9% ownership position. Since TRSs would constitute "equity equivalent derivatives" under the Proposed Amendments, the investor would be required to file an early warning report (as a result of having crossed the proposed early warning reporting threshold of 5%).

In TRSs and similar derivative instruments, the counterparty (typically, a dealer) will in many cases have a strong economic incentive to hedge its obligations under the arrangement through holding the reference securities and may decide to vote in accordance with its client's wishes or to make the securities available to the client on request.

Hidden ownership strategies can significantly undermine the early warning regime since an investor may have *de facto* access to securities held by the derivative counterparty but avoid a disclosure obligation which has traditionally been premised on *de jure* ownership or control.

The fact that a substantial block of securities has been "tied up" (i.e., is being held by counterparties to a substantial undisclosed equity derivative position), and is therefore not available to market participants, may be highly relevant information to market participants.

We believe that these types of financial instruments are often used by investors that are EIs and therefore eligible to use the AMR system. However, as noted below, they would be disqualified from AMR in circumstances where they cease to be passive investors.

Disclosure in Early Warning Reports

We also propose to amend the early warning forms (Appendices E, F and G of NI 62-103) to broaden the scope of required disclosure to encompass interests of an acquiror in "equity equivalent derivatives".

⁷ We are not proposing, at this time, to similarly revise the calculation of the take-over bid threshold to include equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. We need to consider further the impact of any change to the take-over bid threshold before we propose any amendment to this threshold.

If early warning reporting requirements are triggered because a person has acquired (or disposed of) securities or an equity equivalent derivative in respect of securities of a reporting issuer, that person will be required to disclose the existence and material terms of any related financial instruments in which it has an interest.⁸ We believe this amendment will result in more specific disclosure about an acquiror's actual economic and voting interests in an issuer and thereby substantially address the transparency concerns associated with these types of arrangements.

Securities Lending Arrangements

We are proposing to clarify and amend the existing early warning reporting disclosure requirements to provide greater transparency about, and ensure appropriate disclosure of, securities lending arrangements for the purposes of early warning disclosure requirements.

Securities lending describes the market practice whereby securities are temporarily transferred from one party (the lender) to another party (the borrower) in return for a fee. As part of the lending agreement, the borrower is obliged to redeliver to the lender securities that are identical to the securities transferred or lent, either on demand or at the end of the loan term. Although securities lending transactions are commonly described as "loans", this description may be misleading in that securities lending transactions, in fact, involve a transfer of title to the loaned securities against a collateralized undertaking to return equivalent securities either on demand or at the end of an agreed term.

Consequently, as the new owner of the securities, the borrower is entitled to vote the securities and receives any dividend or interest payments paid during the loan term. However, the economic benefits of ownership will typically be transferred back to the lender so, while the borrower is entitled to receive any dividend and interest payments over the life of the loan, it will make equivalent payments to the lender. If the lender wants to vote the loaned securities, it may have the right to recall equivalent securities from the borrower but will not be entitled to vote such securities unless and until they are recalled.

While securities lending arrangements provide benefits to the market, in that they promote enhanced liquidity, reduce custodial fees, and may generate additional revenues for institutional investors and other participants, we believe that increased transparency about these arrangements is appropriate so that the market can assess the use of these arrangements by the parties.

Early Warning Reporting Trigger

We are of the view that existing disclosure requirements already apply to securities lending arrangements and, consequently, it is not necessary to amend the existing early warning reporting disclosure trigger to explicitly capture securities that are "lent" or "borrowed" under such transactions.

1. Reporting by Borrowers

We believe that the current early warning reporting requirements apply to securities that are "lent to" or "borrowed" by a securityholder under a securities lending arrangement for purposes of determining whether the securityholder has crossed an early warning reporting disclosure threshold.

For example, if a securityholder currently owns 4% of the outstanding common shares of a reporting issuer, and then "borrows" an additional 10% of the outstanding common shares, the securityholder will be required to file an early warning report since the securityholder will, as a consequence of the borrowing transaction, have acquired (for the duration of the arrangement) beneficial ownership of, or control or direction over, 5% or more of the outstanding common shares of the issuer.⁹ In this example, the borrowing securityholder may also be considered an "empty voter" in connection with the borrowed shares, since the borrower may have the ability to vote these shares but will not, as a result of the borrowing arrangement, have an economic interest in the shares.

2. Reporting by Lenders

Consistent with our view regarding the application of early warning requirements for borrowing securityholders, we also believe that securities "lent out" by a securityholder under a securities lending arrangement must be accounted for in determining if the lender has crossed the early warning reporting disclosure threshold.

⁸ "Related financial instrument" has the meaning ascribed to that term in NI 55-104.

⁹ In this regard, it should be noted that, although the *Income Tax Act* (Canada) (the ITA) includes certain deeming provisions (see Subsection 260(2) of the ITA) that deem a transfer of "qualified securities" pursuant to a "securities lending arrangement" not to be a disposition (or later reacquisition) of the "loaned securities" for the purposes of the ITA, there is currently no comparable deeming provision under securities legislation.

We also note that, as described above, we are proposing to require persons who are subject to early warning reporting obligations to report not only increases but also decreases in ownership of 2% or more of the applicable securities.¹⁰ As a result of this proposed downward reporting requirement, we believe that the early warning reporting requirements would, absent an exemption, apply to lenders who dispose of 2% or more of the applicable securities under securities lending arrangements. Using the example from the previous section, the lender of the 10% of outstanding common shares would be required to file an early warning report in respect of the disposition of 10% of the common shares pursuant to the securities lending arrangement, unless an applicable exemption was available.

Exemption for Certain Securities Lending Arrangements

We are considering providing an exemption for lenders from the early warning reporting trigger for securities transferred or lent pursuant to “specified securities lending arrangements”. Specified securities lending arrangement would be arrangements that include an unrestricted ability to recall the securities before a meeting of securityholders.

We are not proposing at this time a corresponding exemption for persons that wish to borrow securities from securities lenders as we believe securities borrowing arrangements may give rise to empty voting situations and that early warning disclosure requirements should generally apply to such transactions.

Disclosure in Early Warning Report

Under the current early warning disclosure form, a person that is required to file an early warning report (or an alternative monthly report) is generally not required to disclose the general nature and material terms of “lending arrangements”.¹¹ In view of our concerns over the need for transparency of securities lending arrangements, we are proposing to remove the disclosure carve-out for lending arrangements in early warning reports. The Proposed Amendments include requirements to disclose securities lending arrangements in effect at the time of a reportable transaction even if that transaction did not involve a securities lending arrangement.

Changes to Alternative Monthly Reporting in NI 62-103

The policy rationale underlying the relaxed timing requirements for reporting under the AMR regime in NI 62-103 is that the regime is available only to an EII with a passive intent concerning its ownership or control of securities of a reporting issuer. Currently, the AMR regime is unavailable for an EII who either

- makes, or intends to make, a take-over bid for securities of the reporting issuer, or
- proposes, or intends to propose, a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer if the EII would obtain a controlling interest in the reporting issuer.

An EII who solicits, or intends to solicit, proxies from the securityholders of a reporting issuer is eligible to use the AMR regime even though the intent of the EII may be to actively engage with the securityholders of the reporting issuer. We believe that allowing an EII access to the AMR regime in this circumstance is not consistent with the policy intent of the regime.

To address this concern, we propose making the AMR regime unavailable for EII's who solicit, or intend to solicit, proxies from security holders of a reporting issuer on matters relating to the election of directors of the reporting issuer or a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of the reporting issuer.

Summary of the Proposed Amendments

The Proposed Amendments are summarized as follows.

1. The early warning reporting threshold is decreased from 10% to 5%. The news release must be issued and filed promptly but no later than the opening of trading on the next business day.
2. In calculating whether the threshold has been reached, an investor must include equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings, and securities lending arrangements.
3. Further disclosure is required if there is a 2% increase or decrease in ownership or if there is a change in a material fact contained in an earlier report.

¹⁰ We note that EII's reporting under the AMR system are currently subject to a reporting requirement for incremental decreases in ownership.

¹¹ See Item 1(g) of Appendix E and Item 1(g) of Appendix F to NI 62-103.

4. A news release must be issued and filed and a report must be filed if the ownership percentage decreases to less than 5%. This proposed change provides valuable information to the market and also resolves reporting difficulties. For example, if ownership decreases from 6% to 4.5%, without the proposed change, disclosure of the decrease to 4.5% would not be required. If, at a later date, a person acquires a 1% ownership, it would not be clear how to disclose the acquisition because the previous report disclosed a 6% ownership but the person owns 5.5%. With the Proposed Amendments, we require disclosure if ownership drops to 4.5% and further disclosure if the 5% threshold is subsequently crossed.
5. Presently, the early warning requirements are accelerated during a take-over bid by requiring disclosure of acquisitions by a party other than the offeror at the 5% level. Since the Proposed Amendments impose a reporting threshold of 5% and disclosure no later than the opening of trading on the next business day, we do not think that we need to maintain the particular provisions for reporting during a take-over bid.

We are proposing, as a consequential amendment, the repeal of the definition of “acquisition announcement provisions” in NI 62-103.
6. We propose to replace current Appendix E to NI 62-103 with new disclosure requirements in the form of Form 62-103F1. We have added instructions on the type of disclosure we expect for each of the items required to be disclosed. We also propose that the report be certified and signed. Conforming amendments have been made to the disclosure required for an EII found in former Appendix F and Appendix G (now Form 62-103F2 and Form 62-103F3).
7. We exclude a person from the AMR system if the person solicits, or intends to solicit, proxies from the security holders of a reporting issuer on matters relating to the election of directors of the reporting issuer or to a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of the reporting issuer.

Alternatives Considered

Except for maintaining the status quo, no alternatives to the Proposed Amendments were considered.

Anticipated Costs and Benefits

The Proposed Amendments, including the reduction of the early warning reporting threshold from 10% to 5% and enhanced scope of the disclosure obligations, will provide greater transparency about significant holdings of an issuer's securities. We anticipate that the dissemination of this information may lead to greater market efficiency. However, these changes will result in increased compliance costs and other costs, including potential dissemination of investment strategies.

The Proposed Amendments include changes that will require the disclosure and aggregation of certain equity derivative positions and securities lending arrangements. The inclusion of these types of transactions in the early warning framework will reinforce the quality and integrity of the early warning reporting regime. While these changes will create increased compliance costs, we have endeavoured to minimize the impact by limiting, at this time, the types of derivatives that would be captured within the regime and providing an exemption for lenders from disclosure of certain securities lending arrangements.

We considered whether the Proposed Amendments may make take-over bids more expensive since an offeror's ability to obtain a toe-hold without disclosure would be reduced to below 5%. However, we understand that generally offerors do not currently purchase more than 5% before a bid on the basis that such purchases may move the market and the identity of the offeror would become known.

Early warning disclosure at 5% can benefit potential offerors because of the possibility of identifying, for lock-up agreements, securityholders that hold 5% of the target securities. As well, the earlier disclosure benefits securityholders who would otherwise have sold at a lower price while the acquiror was purchasing securities. A further benefit to decreasing the reporting threshold to 5% is that it would give issuers more time to defend against a potential offeror or activist shareholder.

Local Matters

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

Request for Comments

We welcome your comments on the Proposed Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. Do you agree with our proposal to maintain the requirement for further reporting at 2% or should we require further reporting at 1%? Please explain why or why not.
2. A person cannot acquire further securities for a period beginning at the date of acquisition until one business day after the filing of the report. This trading moratorium is not applicable to acquisitions that result in the person acquiring beneficial ownership of, or control or direction over, 20% or more of the voting or equity securities on the basis that the take-over bid provisions are applicable at the 20% level.

The proposed decrease to the early warning reporting threshold would result in the moratorium applying at the 5% ownership threshold. We believe that the purpose of the moratorium is still valid at the 5% level because the market should be alerted of the acquisition before the acquiror is permitted to make additional purchases.

- (a) Do you agree with our proposal to apply the moratorium provisions at the 5% level or do you believe that the moratorium should not be applicable between the 5% and 10% ownership levels? Please explain your views.
 - (b) The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.
 - (c) Do you think that a moratorium is effective? Is the exception at the 20% threshold justified? Please explain why or why not.
3. We currently recognize that accelerated reporting is necessary if securities are acquired during a take-over bid by requiring a news release at the 5% threshold to be filed before the opening of trading on the next business day.

With the Proposed Amendments to the early warning reporting threshold, we do not propose to further accelerate early warning reporting during a take-over bid.

- (a) Do you agree? Please explain why or why not.
 - (b) If you disagree, how should we accelerate reporting of transactions during a take-over bid? Should we decrease the threshold for reporting changes from 2% to 1%? Or do you think that requiring early warning reporting at the 3% level is a more appropriate manner to accelerate disclosure? Please explain your views.
4. The Proposed Amendments would apply to all acquirors including EILs.
 - (a) Should the proposed early warning threshold of 5% apply to EILs reporting under the AMR system provided in Part 4 of NI 62-103? Please explain why or why not.
 - (b) Please describe any significant burden for these investors or potential benefits for our capital markets if we require EILs to report at the 5% level.
5. Mutual funds that are reporting issuers are not EILs as defined in NI 62-103 and are therefore subject to the general early warning requirements in MI 62-104. Are there any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% or does the burden of reporting at 5% outweigh the potential benefits? Please explain why or why not.
6. As explained above, we propose to amend the calculation of the threshold for filing early warning reports so that an investor would need to include within the early warning calculation certain equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. These provisions would only capture derivatives that *substantially replicate* the economic consequences of ownership and would not capture partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). Do you agree with this approach? If not, how should we deal with partial-exposure instruments?

Request for Comments

7. We propose changes to NP 62-203 in relation to the definition of equity equivalent derivative to explain when we would consider a derivative to substantially replicate the economic consequences of ownership of the reference securities. Do you agree with the approach we propose?
8. Do you agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving the securities of the reporting issuer? Are these the appropriate circumstances to disqualify an EII? Please explain, or if you disagree, please suggest alternative circumstances.
9. We propose to exempt from early warning requirements acquirors that are lenders in securities lending arrangements and that meet certain conditions. Do you agree with this proposal? Please explain why or why not.
10. Do you agree with the proposed definition of "specified securities lending arrangement"? If not, what changes would you suggest?
11. We are not proposing at this time an exemption for persons that borrow securities under securities lending arrangements as we believe securities borrowing may give rise to empty voting situations for which disclosure should be prescribed under our early warning disclosure regime. Do you agree with this view? If not, why not?
12. Do the proposed changes to the early warning framework adequately address transparency concerns over securities lending transactions? If not, what other amendments should be made to address these concerns?
13. Do you agree with our proposal to apply the Proposed Amendments to all reporting issuers including venture issuers? Please explain why or why not. Do you think that only some and not all of the Proposed Amendments should apply to venture issuers? If so, which ones and why?
14. Some parties to equity equivalent derivatives may have acquired such derivatives for reasons other than acquiring the referenced securities at a future date. For example, some parties to these derivatives may wish to maintain solely an economic equivalency to the securities without acquiring the referenced securities for tax purposes or other reasons. Would the proposed requirement lead to over-reporting of total return swaps and other equity equivalent derivatives? Or would the possible over-reporting be mitigated by the fact that it is likely that parties to equity equivalent derivatives would qualify under the AMR regime?
15. If the proposed new requirement does lead to an over-reporting of these derivatives, is this rectified by the requirement in the early warning report for acquirors to explain the purpose of their acquisition and thereby clarify that they do not intend to acquire the referenced securities upon termination of the swap?

How to provide your comments

Please provide your comments in writing by **June 12, 2013**. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word, Windows format.

Please address your submission to the CSA as follows:

British Columbia Securities Commission

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments **only** to the two addresses that follow. Your comments will be distributed to the other participating CSA.

Request for Comments

Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22^e étage
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Content of Annexes

Annex A sets out the proposed amendments to MI 62-104

Annex B sets out the proposed changes to NP 62-203

Annex C sets out the proposed amendments to NI 62-103

Annex D sets out local matters

Questions

Please refer your questions to any of:

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ANNEX A

PROPOSED 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. *Part 5 is replaced with the following:*

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;

“derivative” has the meaning ascribed to that term in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;

“equity equivalent derivative” means a derivative which is referenced to or derived from a voting or equity security of an issuer and which provides the holder, directly or indirectly, with an economic interest that is substantially equivalent to the economic interest associated with beneficial ownership of the security;

“economic interest” has the meaning ascribed to that term in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;

“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, a copy of which is retained by each party to the 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 borrower if the borrower 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 provides for either or both of the following:
 - (i) the lender has an unrestricted right to recall all securities or identical securities that it has transferred or lent under the securities lending arrangement prior to the record date for 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 with respect to which both of the following apply:

- (a) a person, the lender, transfers or lends at any particular time a security to another person, the borrower;
- (b) it may reasonably be expected that the borrower will at a later date transfer or return the security or an identical security to the lender.

(2) For the purposes of this Part, subsections 1.8(1), (2) and (4) and section 1.9 apply as if the references to “offeror” in those provisions were references to “acquiror”.

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

(4) For purposes of section 5.2, in determining control or direction over securities by an acquiror or any person acting jointly or in concert with the acquiror, at any given date, the acquiror or the person is deemed to have acquired, and to have, control or direction over a security, including an unissued security, if the acquiror or the person has acquired beneficial ownership of, or has control or direction over, an equity equivalent derivative of that security.

Early warning

5.2 (1) An acquiror who acquires beneficial ownership of, or control or direction over, a voting or equity security of any class of a reporting issuer or beneficial ownership of, or control or direction over, 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 5% or more of the outstanding securities of that class, must

- (a) promptly, but 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, but 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 of beneficial ownership of, or 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 this section,
 - (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 report required under subsection (1) or paragraph (a) of this subsection.

(3) An acquiror must issue 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 falls below 5%.

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 at the end of the first business day following the date that the report is filed, the acquiror or any person acting jointly or in concert with the acquiror must not acquire or offer to acquire beneficial ownership of 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.

Copies of news release and report

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

Exemption

5.5 Sections 5.2 and 5.3 do not apply to a lender in respect of securities transferred or lent pursuant to a specified securities lending arrangement.

3. ***These amendments come into force on ****.***

ANNEX B

PROPOSED 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 adding the following after Part 2:**

PART 3 REPORTS AND ANNOUNCEMENT OF ACQUISITIONS

3.1 Equity equivalent derivative –The definition of “equity equivalent derivative” is intended to refer to an equity total return swap or substantially similar derivative which is referenced to or derived from a voting or equity security of an issuer, with an economic interest that is substantially equivalent to the economic interest associated with beneficial ownership of the security. Where an investor acquires an equity equivalent derivative, the investor would be required to include the securities referenced by the derivative when determining whether the investor has a disclosure obligation.

We would generally consider a derivative to substantially replicate the economic consequences of ownership of a specified number of reference securities if a dealer or other market participant that took a short position on the derivative could substantially hedge its obligations under the derivative by holding 90% or more of the specified number of reference securities.

An equity equivalent derivative would generally include only a cash-settled equity total return swap or substantially similar derivative. However, an equity equivalent derivative would not include partial-exposure derivatives. Partial-exposure derivatives include cash-settled call options which only have upside exposure.

We remind market participants that the securities regulatory authorities retain public interest jurisdiction to respond to activities involving partial-exposure instruments that may be considered abusive.

3.2 Securities lending arrangements – Securities lending describes the market practice whereby securities are temporarily transferred from one party (the lender) to another party (the borrower) in return for a fee. As part of the lending agreement, the borrower is obliged to redeliver to the lender securities that are identical to the securities transferred or lent, either on demand or at the end of the loan term.

Securities lending arrangements transfer title of securities from the lender to the borrower for the duration of the loan. During this period, the borrower has full ownership rights and may re-sell the securities as well as vote them. Securities lending agreements between the lender and the borrower generally provide for payment to the lender of any economic benefits (for example, dividends) accruing to the securities while “on loan”. Therefore, securities lending separates the economic interest in the securities which remains with the lender from the ownership and voting rights which are transferred to the borrower. If the lender wants to vote the loaned securities, it may have the right to recall equivalent securities from the borrower but will not be entitled to vote such securities unless and until they are recalled.

Accordingly, in securities lending arrangements, the lender disposes of its securities and the borrower acquires the securities for the duration of the loan. Consequently, the lender and the borrower should consider securities sold (lent) and acquired (borrowed) under securities lending arrangements in determining whether an early warning reporting obligation has been triggered.

Section 5.5 of the Instrument and section 7.3 of the Ontario Rule exempt the lender of securities under a securities lending arrangement from the early warning requirements if the securities are transferred or lent in a securities lending arrangement that meets the criteria of a specified securities lending arrangement. If the securities lending arrangement is not a specified securities lending arrangement then the early warning reporting requirements for dispositions of securities will apply to the disposition of securities by the lender under the securities lending arrangement.

The borrower will in all cases be subject to the requirements in Part 5 of the Instrument and section 102.1 of the Ontario Act and Part 7 of the Ontario Rule, including if the securities are acquired by the borrower pursuant to a specified securities lending arrangement.

2. **These changes become effective on ****.**

ANNEX C

PROPOSED 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. ***Section 1.1 is amended by:***
 - (a) ***adding the following definitions in alphabetical order:***

“acquiror” has the meaning ascribed to that term in Part 5 of MI 62-104 and, in Ontario, subsection 102 (1) of the *Securities Act* (Ontario);

“acquiror’s securities” has the meaning ascribed to that term in Part 5 of MI 62-104 and, in Ontario, subsection 102 (1) of the *Securities Act* (Ontario);

“economic exposure” has the meaning ascribed to that term in NI 55-104;

“equity equivalent derivative” has the meaning ascribed to that term in Part 5 of MI 62-104 and, in Ontario, section ● of the *Securities Act* (Ontario);

“securities lending arrangement” has the meaning ascribed to that term in Part 5 of MI 62-104 and, in Ontario, Part 1 of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*;

“specified securities lending arrangement” has the meaning ascribed to that term in Part 5 of MI 62-104 and, in Ontario, Part 1 of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*;
 - (b) ***repealing the definition of “acquisition announcement provisions”;***
 - (c) ***replacing “offeror’s” with “acquiror’s” in the definition of “applicable definitions”;***
 - (d) ***amending the definition of “applicable provisions” by the following:***
 - (i) ***adding “and” after “provisions,” in paragraph (c);***
 - (ii) ***replacing “, and” with “;” in paragraph (d);***
 - (iii) ***deleting paragraph (e);***
 - (e) ***replacing the definition of “early warning requirements” with the following:***

“early warning requirements” means the requirements set out in section 5.2 of MI 62-104 and, in Ontario, subsections 102.1(1) and 101.1(2) of the *Securities Act* (Ontario);
 - (f) ***replacing the definition of “moratorium provisions” with the following:***

“moratorium provisions” means the provisions set out in subsection 5.3(1) of MI 62-104 and, in Ontario, subsection 102.1(3) of the *Securities Act* (Ontario);
 - (g) ***deleting the definitions of “offeror” and “offeror’s securities”.***
3. ***Section 2.3 is repealed.***
4. ***Section 3.1 is replaced with the following:***

3.1 Contents of News Release and Report – (1) A news release and report required under the early warning requirements shall contain the information required by Form 62-103F1 *Required Disclosure under the Early Warning Requirements*.

(2) Despite subsection (1), the news release required under the early warning requirements may omit the information required by section 2.3, Item 6 and Item 9 of Form 62-103F1 *Required Disclosure under the Early Warning Requirements* if the news release indicates the name and telephone number of an individual to contact to obtain a copy of the report.

5. **Section 3.2 is amended by :**

(a) **replacing** “offeror” **with** “acquiror” **wherever it occurs;**

(b) **deleting** “and the acquisition announcement provisions”.

6. **Section 4.2 is amended by deleting “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following paragraph:**

(c) solicits or intends to solicit proxies from security holders of a reporting issuer on matters relating to the election of directors of the reporting issuer or to a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of the reporting issuer.

7. **Subsection 4.3(2) is amended by replacing “Appendix F” with “Form 62-103F2 Required Disclosure by an Eligible Institutional Investor under Section 4.3”.**

8. **In the following provisions, “10 percent” is replaced with “5 percent”:**

(a) **paragraph 4.3(4)(b);**

(b) **section 4.4;**

(c) **section 4.5 wherever it occurs.**

9. **Subsection 4.7(1) is amended by replacing “Appendix G” with “Form 62-103F3 Required Disclosure by an Eligible Institutional Investor under Part 4”.**

10. **Section 5.1 is amended by replacing “offeror” with “acquiror” in paragraph (b).**

11. **Section 8.2 is amended by:**

(a) **deleting** “(1)”;

(b) **replacing in paragraph (b) “10 percent” with “5 percent”.**

12. **Section 9.1 is amended by deleting “(3),” in subsection (1) and by repealing subsection (3).**

13. **Appendix E is replaced with the following:**

**Form 62-103F1
REQUIRED DISCLOSURE UNDER THE EARLY WARNING REQUIREMENTS**

State if the report is filed to amend information disclosed in an earlier report. Indicate the date of the report that is being amended.

Item 1 – Security and Issuer

1.1 State the title of the class of securities to which this report relates and the name and address of the principal office of the issuer of the securities.

1.2 State the name of the market in which the transaction or occurrence that triggered the requirement to file this report took place.

Item 2 – Identity of the Acquiror

2.1 State the name and address of the acquiror.

2.2 State the date of the transaction or occurrence that triggered the requirement to file this report and briefly describe the transaction or occurrence.

2.3 State the names of any joint actors.

INSTRUCTION:

If the acquiror is an individual, provide the name, address and present principal occupation or employment of the individual and the name, principal business and address of any person or company that employs the individual.

If the acquiror is a corporation, general partnership, limited partnership, syndicate or other group of persons, provide its name, the address of its principal office, its jurisdiction of incorporation or organization, and its principal business.

Item 3 – Interest in Securities of the Issuer

3.1 State the designation and number or principal amount of securities acquired or disposed that triggered the requirement to file the report and the change in the acquiror's securityholding percentage in the class of securities.

3.2 State whether it was ownership or control that was acquired, including control that is deemed to exist under the law.

3.3 If the transaction involved an equity equivalent derivative, state the actual or notional number or principal amount of the underlying securities.

3.4 If the transaction involved a securities lending arrangement, disclose that fact.

3.5 State the designation and number or principal amount of securities and the acquiror's securityholding percentage in the class of securities immediately before and after the transaction or occurrence that triggered the requirement to file this report.

3.6 State the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities over which

- (a) the acquiror, either alone or together with any joint actors, has ownership and control;
- (b) the acquiror, either alone or together with any joint actors, has ownership but control is held by persons or companies other than the acquiror or any joint actor;
- (c) the acquiror, either alone or together with any joint actors, has exclusive or shared control but does not have ownership; and
- (d) the acquiror, either alone or together with joint actors, is deemed to have control.

3.7 If the acquiror or any of its joint actors has an interest in, or right or obligation associated with, a related financial instrument involving a security of the class of securities in respect of which disclosure is required under this item, including a related financial instrument that is an equity equivalent derivative, provide all of the following disclosure:

- (a) describe the material terms of the agreement, arrangement or understanding that involves an equity equivalent derivative,
- (b) disclose any other related financial instrument and its impact on the acquiror's securityholdings.

3.8 Disclose the existence and the material terms of any securities lending arrangement including the duration of the arrangement and details of the recall provisions.

3.9 If the acquiror has transferred or lent securities pursuant to a specified securities lending arrangement, and that arrangement is still in effect, disclose the existence and the material terms of the arrangement including the duration of the arrangement and the details of the recall provisions.

3.10 Disclose any transaction that had the effect of altering, directly or indirectly, the acquiror's economic exposure to the issuer.

INSTRUCTIONS

(i) If the acquiror or any of its joint actors has acquired ownership of, or control or direction over, an equity equivalent derivative, the acquiror or joint actor is deemed to control or direct the related security of the issuer pursuant to subsection 5.1(4) of MI 62-104 and section 6 of the Securities Act (Ontario). Therefore, the acquiror and joint actor must disclose "as a distinct item" information in this report (including the number of securities and the securityholding percentage in the securities of the issuer as prescribed by this Item) as if the acquiror or joint actor directly owned or controlled the securities of the issuer to which the equity equivalent derivative relates.

(ii) "Related financial instrument" has the meaning ascribed to that term in NI 55-104. It is intended to capture disclosure of transactions or agreements where the economic interest related to a security beneficially owned or controlled has been altered.

(iii) For the purposes of Items 3.7(a), 3.8 and 3.9, a material term of an agreement, arrangement or understanding that involves an equity equivalent derivative, or a securities lending arrangement, would generally not include the identity of the counterparty.

Item 4 – Consideration Paid

4.1 State the value, in Canadian dollars, of any consideration paid or received per security and in total. Indicate whether the consideration paid or received represents a premium to the market price and, if applicable, the percentage.

4.2 In the case of a transaction or occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, disclose the nature and value, in Canadian dollars, of the consideration paid or received by the acquiror.

4.3 If the securities were acquired or disposed of other than by purchase or sale, describe the method of acquisition or disposition.

Item 5 – Purpose of the Transaction

State the purpose or purposes of the acquiror and any joint actors for the acquisition or disposition of securities of the reporting issuer. Describe any plans or future intentions which the acquiror and any joint actors may have which relate to or would result in any of the following:

- (a) the acquisition by any person of additional securities of the reporting issuer, or the disposition of securities of the reporting issuer;
- (b) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the reporting issuer or any of its subsidiaries;
- (c) a sale or transfer of a material amount of assets of the reporting issuer or any of its subsidiaries;
- (d) any change in the present board of directors or management of the reporting issuer, including any plans or intentions to change the number or term of directors or to fill any existing vacancies on the board;
- (e) any material change in the present capitalization or dividend policy of the reporting issuer;
- (f) any other material change in the reporting issuer's business or corporate structure;
- (g) changes in the reporting issuer's charter, bylaws or similar instruments or other actions which may impede the acquisition of control of the reporting issuer by any person or company;
- (h) a class of securities of the reporting issuer to be delisted from or to cease to be authorized to be quoted on a marketplace;
- (i) the issuer to cease to be a reporting issuer in any jurisdiction;
- (j) any intention to solicit proxies from securityholders;
- (k) any action similar to any of those enumerated above.

Item 6 – Contracts, Agreements, Commitments or Understandings With Respect to Securities of the Issuer

Describe any contracts, agreements, commitments or understandings between the acquiror and a joint actor and among such persons and any person with respect to any securities of the issuer, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, naming the persons with whom such contracts, agreements, commitments or understandings have been entered into. Include information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

INSTRUCTION

Contracts, agreements, commitments or understandings that are described under Item 3 do not have to be disclosed under this item.

Item 7 – Change in material fact

If applicable, describe the change in a material fact set out in a previous report filed by the acquiror in respect of the reporting issuer's securities.

Item 8 – Exemption

If the acquiror relies on an exemption from requirements in securities legislation applicable to formal bids for the transaction, state the exemption being relied on and describe the facts supporting that reliance.

Item 9 – Certification

The acquiror must certify that the information is true and complete in every respect. In the case of an agent, the certification is based on the agent's best knowledge, information and belief but the acquiror is still responsible for ensuring that the information filed by the agent is true and complete.

This report must be signed by each person on whose behalf the report is filed or his authorized representative.

It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Certificate

The certificate must state the following:

I, as the acquiror, certify, or I, as the agent filing the report on behalf of an acquiror, certify to the best of my knowledge, information and belief, that the statements made in this report are true and complete in every respect.

Date

Signature

Name/Title

14. Appendix F is replaced with the following:

**Form 62-103F2
REQUIRED DISCLOSURE BY AN ELIGIBLE INSTITUTIONAL INVESTOR UNDER SECTION 4.3**

Item 1 – Security and Issuer

1.1 State the title of the class of securities to which this report relates and the name and address of the principal office of the issuer of such securities.

1.2 State the name of the market in which the transaction or occurrence that that triggered the requirement to file this report took place.

Item 2 – Identity of Eligible Institutional Investor

2.1 State the name and address of the eligible institutional investor.

2.2 State the date of the transaction or occurrence that triggered the requirement to file this report and briefly describe the transaction or occurrence.

2.3 State that the eligible institutional investor is ceasing to file reports under Part 4 for the reporting issuer.

2.4 Disclose the reasons for doing so.

2.5 State the names of any joint actors.

Item 3 – Interest in Securities of the Issuer

3.1 State the designation and number or principal amount of securities and the eligible institutional investor's securityholding percentage in the class of securities immediately before and after the transaction or occurrence that triggered the requirement to file this report.

3.2 State whether it was ownership or control that was acquired, including control that is deemed to exist under the law.

3.3 If the transaction involved an equity equivalent derivative, state the actual or notional number or principal amount of the underlying securities.

3.4 If the transaction involved a securities lending arrangement, disclose that fact.

3.5 State the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities over which

- (a) the eligible institutional investor, either alone or together with any joint actors, has ownership and control;
- (b) the eligible institutional investor, either alone or together with any joint actors, has ownership but control is held by persons or companies other than the eligible institutional investor or any joint actor;
- (c) the eligible institutional investor, either alone or together with any joint actors, has exclusive or shared control but does not have ownership; and
- (d) the eligible institutional investor, either alone or together with joint actors, is deemed to have control.

3.6 If the eligible institutional investor or any of its joint actors has an interest in, or right or obligation associated with, a related financial instrument involving a security of the class of securities in respect of which disclosure is required under this item, including a related financial instrument that is an equity equivalent derivative, provide all of the following disclosure:

- (a) describe the material terms of the agreement, arrangement or understanding that involves an equity equivalent derivative;
- (b) disclose any other related financial instrument and its impact on the eligible institutional investor's securityholdings.

3.7 Disclose the existence and the material terms of the securities lending arrangement including the term of the arrangement and the recall provisions.

3.8 If the eligible institutional investor has transferred or lent securities pursuant to a specified securities lending arrangement still in effect, disclose the existence and the material terms of the arrangement including the term of the arrangement and the recall provisions.

3.9 Disclose any transaction that has the effect of altering, directly or indirectly, the eligible institutional investor's economic exposure to the issuer.

INSTRUCTIONS

(i) If the eligible institutional investor or any of its joint actors has acquired ownership of, or control or direction over, an equity equivalent derivative, the eligible institutional investor or joint actor is deemed to control or direct the related security of the issuer pursuant to subsection 5.1(4) of MI 62-104 and section 110 of the Securities Act (Ontario). Therefore, the eligible institutional investor and joint actor must disclose "as a distinct item" information in this report (including the number of securities and the securityholding percentage in the securities of the issuer as prescribed by this Item) as if the eligible institutional investor or joint actor directly owned or controlled the securities of the issuer to which the equity equivalent derivative relates.

(ii) "Related financial instrument" has the meaning ascribed to that term in NI 55-104. It is intended to capture disclosure of transactions or agreements where the economic interest related to a security beneficially owned or controlled has been altered.

(iii) For the purposes of Items 3.6(a), 3.7 and 3.8, a material term of an agreement, arrangement or understanding that involves an equity equivalent derivative, or a securities lending arrangement, would generally not include the identity of the counterparty.

Item 4 – Consideration Paid

4.1 State the value, in Canadian dollars, of any consideration paid or received per security and in total. Indicate whether the consideration paid or received represents a premium to the market price and, if applicable, the percentage.

4.2 In the case of a transaction or occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, disclose the nature and value, in Canadian dollars, of the consideration paid or received by the eligible institutional investor.

4.3 If the securities were acquired or disposed of other than by purchase or sale, describe the method of acquisition or disposition.

Item 5 – Purpose of the Transaction

State the purpose or purposes of the eligible institutional investor and any joint actors for the acquisition or disposition of securities of the reporting issuer. Describe any plans or future intentions which the eligible institutional investor and any joint actors may have which relate to or would result in any of the following:

- (a) the acquisition by any person of additional securities of the reporting issuer, or the disposition of securities of the reporting issuer;
- (b) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the reporting issuer or any of its subsidiaries;
- (c) a sale or transfer of a material amount of assets of the reporting issuer or any of its subsidiaries;
- (d) any change in the present board of directors or management of the reporting issuer, including any plans or intentions to change the number or term of directors or to fill any existing vacancies on the board;
- (e) any material change in the present capitalization or dividend policy of the reporting issuer;
- (f) any other material change in the reporting issuer's business or corporate structure;
- (g) changes in the reporting issuer's charter, bylaws or similar instruments or other actions which may impede the acquisition of control of the reporting issuer by any person;
- (h) a class of securities of the reporting issuer to be delisted from or to cease to be authorized to be quoted on a marketplace;
- (i) the issuer to cease to be a reporting issuer in any jurisdiction;
- (j) any intention to solicit proxies from securityholders;
- (k) any action similar to any of those enumerated above.

Item 6 – Contracts, Agreements, Commitments or Understandings With Respect to Securities of the Issue

Describe any contracts, agreements, commitments or understandings between the eligible institutional investor and a joint actor and among such persons and any person with respect to any securities of the issuer, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, naming the persons with whom such contracts, agreements, commitments or understandings have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

INSTRUCTION

Contracts, agreements, commitments or understandings that are described under Item 3 do not have to be disclosed under this item.

Item 7 – Change in material fact

If applicable, describe the change in a material fact set out in a previous report filed by the eligible institutional investor in respect of the reporting issuer's securities.

Item 8 – Exemption

If the eligible institutional investor relies on an exemption from the requirement in securities legislation applicable to formal bids for the transaction, state the exemption being relied on and describe the facts supporting that reliance.

Item 9 – Certification

The eligible institutional investor must certify that the information is true and complete in every respect. In the case of an agent, the certification is based on the agent's best knowledge, information and belief but the eligible institutional investor is still responsible for ensuring that the information filed by the agent is true and complete.

This report must be signed by each person on whose behalf the report is filed or his authorized representative.

It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Certificate

The certificate must state the following:

I, as the eligible institutional investor, certify, or I, as the agent filing the report on behalf of the eligible institutional investor, certify to the best of my knowledge, information and belief, that the statements made in this report are true and complete in every respect.

Date

Signature

Name/Title

15. *Appendix G is replaced with the following:*

Form 62-103F3
REQUIRED DISCLOSURE BY AN ELIGIBLE INSTITUTIONAL INVESTOR UNDER PART 4

State if the report is filed to amend information disclosed in an earlier report. Indicate the date of the report that is being amended.

Item 1 – Security and Issuer

1.1 State the title of the class of securities to which this report relates and the name and address of the principal office of the issuer of such securities.

1.2 State the name of the market in which the transaction or occurrence that triggered the requirement to file this report took place.

Item 2 – Identity of the Eligible Institutional Investor

2.1 State the name and address of the eligible institutional investor.

2.2 State the date of the transaction or occurrence that triggered the requirement to file this report and briefly describe the transaction or occurrence.

2.3 State the name of any joint actors.

2.4 State that the eligible institutional investor is eligible to file reports under Part 4 in respect of the reporting issuer.

Item 3 Interest in Securities of the Issuer

3.1 State the designation and the net increase or decrease in the number or principal amount of securities, and in the eligible institutional investor's securityholding percentage in the class of securities, since the last report filed by the eligible institutional investor under Part 4 or the early warning requirements.

3.2 State the designation and number or principal amount of securities and the eligible institutional investor's securityholding percentage in the class of securities at the end of the month for which the report is made.

3.3 If a transaction involved an equity equivalent derivative, state the actual or notional number or principal amount of underlying securities.

3.4 If a transaction involved a securities lending arrangement, disclose that fact.

3.5 State the designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities over which

- (a) the eligible institutional investor, either alone or together with any joint actors, has ownership and control;
- (b) the eligible institutional investor, either alone or together with any joint actors, has ownership but control is held by persons or companies other than the eligible institutional investor or any joint actor;
- (c) the eligible institutional investor, either alone or together with any joint actors, has exclusive or shared control but does not have ownership; and
- (d) the eligible institutional investor, either alone or together with joint actors, is deemed to have control.

3.6 If the eligible institutional investor or any of its joint actors has an interest in, or right or obligation associated with, a related financial instrument involving a security of the class of securities in respect of which disclosure is required under this item, including a related financial instrument that is an equity equivalent derivative, provide all of the following disclosure:

- (a) describe the material terms of the agreement, arrangement or understanding that involves an equity equivalent derivative;

- (b) disclose any other related financial instrument and its impact on the eligible institutional investor's securityholdings.

3.7 Disclose the existence and the material terms of the securities lending arrangement including the term of the arrangement and the recall provisions.

3.8 If the eligible institutional investor has transferred or lent securities pursuant to a specified securities lending arrangement still in effect, disclose the existence and the material terms of the arrangement including the term of the arrangement and the recall provisions.

3.9 Disclose any transaction that has the effect of altering, directly or indirectly, the eligible institutional investor's economic exposure to the issuer.

INSTRUCTIONS

(i) If the eligible institutional investor or any of its joint actors has acquired ownership of, or control or direction over, an equity equivalent derivative, the eligible institutional investor or joint actor is deemed to control or direct the related security of the issuer pursuant to subsection 5.1(4) of MI 62-104 and section 6 of the Securities Act (Ontario). Therefore, the eligible institutional investor and joint actor must disclose "as a distinct item" information in this report (including the number of securities and the securityholding percentage in the securities of the issuer as prescribed by this Item) as if the eligible institutional investor or joint actor directly owned or controlled the securities of the issuer to which the equity equivalent derivative relates.

(ii) "Related financial instrument" has the meaning ascribed to that term in NI 55-104. It is intended to capture disclosure of transactions or agreements where the economic interest related to a security beneficially owned or controlled has been altered.

(iii) An eligible institutional investor may omit the securityholding percentage from a report if the change in percentage is less than 1% of the class.

(iv) For the purposes of Item 3.6(a), 3.7 and 3.8, a material term of an agreement, arrangement or understanding that involves an equity equivalent derivative, or a securities lending arrangement, would generally not include the identity of the counterparty.

Item 4 – Purpose of the Transaction

State the purpose or purposes of the eligible institutional investor and any joint actors for the acquisition or disposition of securities of the reporting issuer. Describe any plans or future intentions which the eligible institutional investor and any joint actors may have which relate to or would result in any of the following:

- (a) the acquisition by any person of additional securities of the reporting issuer, or the disposition of securities of the issuer;
- (b) a sale or transfer of a material amount of assets of the reporting issuer or any of its subsidiaries;
- (c) any change in the present board of directors or management of the reporting issuer, including any plans or intentions to change the number or term of directors or to fill any existing vacancies on the board;
- (d) any material change in the present capitalization or dividend policy of the reporting issuer;
- (e) any other material change in the reporting issuer's business or corporate structure;
- (f) changes in the reporting issuer's charter, bylaws or similar instruments or other actions which may impede the acquisition of control of the issuer by any person;
- (g) a class of securities of the reporting issuer to be delisted from or to cease to be authorized to be quoted on a marketplace;
- (h) the issuer to cease to be a reporting issuer in any jurisdiction;
- (i) any action similar to any of those enumerated above.

Item 5 – Contracts, Agreements, Commitments or Understandings With Respect to Securities of the Issue

Describe any contracts, agreements, commitments or understandings between the eligible institutional investor and a joint actor and among such persons and any person with respect to any securities of the issuer, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, naming the persons with whom such contracts, agreements, commitments or understandings have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

INSTRUCTION

Contracts, agreements, commitments or understandings that are described under Item 3 do not have to be disclosed under this item.

Item 6 – Change in Material Fact

If applicable, describe the change in a material fact set out in a previous report by the eligible institutional investor under the early warning requirements or Part 4 in respect of the reporting issuer's securities.

Item 7 – Certification

The eligible institutional investor must certify that the information is true and complete in every respect. In the case of an agent, the certification is based on the agent's best knowledge, information and belief but the eligible institutional investor is still responsible for ensuring that the information filed by the agent is true and complete.

This report must be signed by each person on whose behalf the report is filed or his authorized representative.

It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Certificate

The certificate must state the following:

I, as the eligible institutional investor, certify, or I, as the agent filing the report on behalf of the eligible institutional investor, certify to the best of my knowledge, information and belief, that the statements made in this report are true and complete in every respect.

Date

Signature

Name/Title

16. These amendments come into force on **.**

ANNEX D

ADDITIONAL NOTICE REQUIREMENTS IN ONTARIO

Local amendments in Ontario

The Proposed Amendments include amendments to the early warning reporting requirements in MI 62-104 which applies in all provinces and territories of Canada except Ontario. In Ontario, we anticipate that amendments to the Ontario Act will be proposed, in addition to proposed amendments to OSC Rule 62-504 in order to allow the substance of the Proposed Amendments to apply fully in Ontario. The legislative amendments may include those to provide additional rule-making authority and/or amendments to Part XX of the Ontario Act. The text of the proposed amendments to OSC Rule 62-504 is attached at Schedule 1 to this Annex.

Unpublished Materials

In proposing the Proposed Amendments, the CSA has not relied on any significant unpublished study, report or other written materials.

Authority for Proposed Amendments applicable in Ontario

In Ontario, the following provisions of the Ontario Act provide the Ontario Securities Commission (the Ontario Commission) with the authority to make the proposed amendments to OSC Rule 62-504 and NI 62-103:

- Paragraph 143(1)28 of the Ontario Act authorizes the Ontario Commission to make rules regulating take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions, including varying the requirements of sections 102.1 and 102.2 or providing exemptions from either of those sections.
- Paragraph 143(1)35 of the Ontario Act authorizes the Ontario Commission to make rules regulating the Ontario Act in respect of derivatives, including prescribing disclosure requirements.
- Paragraph 143(1)39 of the Ontario Act authorizes the Ontario Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Ontario Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary the documents.

SCHEDULE 1

PROPOSED AMENDMENTS TO
OSC RULE 62-504 TAKE-OVER BIDS AND ISSUER BIDS

1. **OSC Rule 62-504 Take-Over Bids and Issuer Bids is amended by this Instrument.**
2. **The Rule is amended by adding the following sections:**
 - 1.2.1 **Definition of “specified securities lending arrangement”** – In this Rule, “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, a copy of which is retained by each party to the 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 borrower if the borrower 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 provides for either or both of the following:
 - (i) the lender has an unrestricted right to recall all securities or identical securities that it has transferred or lent under the securities lending arrangement prior to the record date for 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;
 - 1.2.2 **Definition of “securities lending arrangement”** – In section 1.2.1, “securities lending arrangement” means an arrangement with respect to which both of the following apply:
 - (a) a person, the lender, transfers or lends at any particular time a security to another person, the borrower;
 - (b) it may reasonably be expected that the borrower will at a later date transfer or return the security or an identical security to the lender.
3. **Section 7.1 is amended**
 - (a) **in paragraph (a) by adding “, but no later than the opening of trading on the business day following the acquisition,” after “promptly”, and**
 - (b) **in paragraph (b) by replacing “within” by “promptly, but no later than” before “2 business days”.**
4. **Section 7.2 is repealed**
5. **The Rule is amended by adding the following section:**
 - 7.3 **Exemption for specified securities lending arrangement** – Section 102.1 of the Act does not apply to a lender in respect of securities transferred or lent pursuant to a specified securities lending arrangement.
6. This Instrument comes into force on [•].