

1.1.4 CSA Staff Notice 62-303 Identifying the Offeror in a Take-over Bid

CSA STAFF NOTICE 62-303

IDENTIFYING THE OFFEROR IN A TAKE-OVER BID

The purpose of this notice is to clarify who should be considered, and identified as, the offeror in a take-over bid when a company, income trust or other entity uses an acquisition entity, subsidiary or other affiliate to make the bid. CSA staff have observed that in some cases where the parties have acted jointly, only one party has signed the certificate page of the take-over bid circular.

An *offer to acquire* or *take-over bid* includes a direct or indirect offer to acquire securities. If a company, income trust or other party (the primary party) uses an acquisition entity, subsidiary or other affiliate (the named offeror) to make a take-over bid, the primary party may be making an indirect bid and therefore the named offeror and the primary party may be joint offerors.

Where a take-over bid is made by a wholly-owned entity, CSA staff regard the entity's parent to be a joint offeror. In that case, both parties must sign the circular as offerors. If the named offeror is not a wholly-owned entity, CSA staff will consider whether the primary party is a joint offeror under the bid by examining its role in that bid. Questions that staff will consider include:

- Did the primary party play a significant role in initiating, structuring and negotiating the take-over bid?
- Does the primary party control any of the terms of the offer?
- Is the primary party financing the bid, guaranteeing the financing, or integral to obtaining the financing?
- Does the primary party directly or indirectly control the named offeror?
- Did the primary party form, or cause to be formed, the named offeror?
- Are the primary party's securities being offered as consideration under the bid?
- Will the primary party beneficially own the assets or securities of the target?

A *yes* answer to any of these questions may lead staff to conclude that the primary party is making an indirect offer, and is a joint offeror under the bid. When that is the case, both the named offeror and the primary party must sign the bid circular as offerors.

Questions

Please refer your questions to any of:

British Columbia Securities Commission:

Leslie Rose, Senior Legal Counsel: (604) 899-6654
Rosann Youck, Senior Legal Counsel: (604) 899- 6656
Callers in B.C. and Alberta may also dial 1 800 373-6393

Alberta Securities Commission:

Patty Johnston, Director, Legal Services and Policy
Development: (403) 297-2074
Marsha Manolescu, Deputy Director, Legislation (403) 297-
2091

Saskatchewan Financial Services Commission:

Dean Murrison, Deputy Director, Legal: (306) 787-5879

The Manitoba Securities Commission:

Chris Besko, Legal Counsel - Deputy Director, Legal and
Enforcement: (204) 945-2561

Ontario Securities Commission:

Ralph Shay, Director, Take-Over/Issuer Bids, Mergers &
Acquisitions: (416) 593-2345
Naizam Kanji, Legal Counsel, Take-Over/Issuer Bids,
Mergers & Acquisitions: (416) 593-8060

Commission des valeurs mobilières du Québec:

Rosetta Gagliardi, Conseillère en réglementation: (514)
940-2199 ext. 4554
Martin Richard, analyste financier: (514) 940-2199 ext.
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