

Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment - Proposed NI 62-104 Take-Over Bids and Issuer Bids, and Related Forms and Companion Policy 62-104CP Take-Over Bids and Issuer Bids, Proposed Amendments to NI 62-103, and Proposed Repeal of CSA Policy 62-201 Bids Made Only in Certain Jurisdictions

NOTICE AND REQUEST FOR COMMENT

**PROPOSED NATIONAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS
AND RELATED FORMS AND COMPANION POLICY 62-104CP TAKE-OVER BIDS AND ISSUER BIDS**

AND

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

AND

PROPOSED REPEAL OF CSA POLICY 62-201 BIDS MADE ONLY IN CERTAIN JURISDICTIONS

April 28, 2006

Introduction

We, the Canadian Securities Administrators (the CSA), seek comment on proposed National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument), which introduces a harmonized take-over bid and issuer bid regime across all Canadian jurisdictions. The Instrument

- consolidates and harmonizes most of the requirements and restrictions governing take-over bids and issuer bids and related early-warning requirements in a single national instrument,
- updates selected take-over bid and issuer bid provisions, and
- provides exemptions from the bid requirements currently contained in various provincial statutes, regulations and rules.

The Instrument requires the use of specified forms of circulars and notices by persons involved in take-over bids and issuer bids:

- Form 62-104F1 *Take-Over Bid Circular*,
- Form 62-104F2 *Issuer Bid Circular*,
- Form 62-104F3 *Directors' Circular*,
- Form 62-104F4 *Director's or Officer's Circular*, and
- Form 62-104F5 *Notice of Change or Notice of Variation*

(collectively, the Forms).

Proposed Companion Policy 62-104CP *Take-Over Bids and Issuer Bids* (the Companion Policy) provides guidance on how the CSA will interpret and apply the Instrument and the Forms.

We are also proposing to make consequential amendments (the Consequential Amendments) to update National Instrument 62-103 *The Early Warning System and Related and Take-over Bid and Insider Reporting Issues* (NI 62-103). We are publishing the Instrument, Forms and Companion Policy together with the Consequential Amendments for a 90-day comment period.

The Instrument and Consequential Amendments will be implemented as

- rules in British Columbia, Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador,
- regulations in Quebec, the Northwest Territories, Nunavut and Yukon, and
- commission regulations in Saskatchewan,

The text of the Instrument and the Consequential Amendments will be available on websites of CSA members, including the following:

www.albertasecurities.com

www.bcsc.bc.ca

www.msc.gov.on.ca

www.osc.gov.on.ca

www.gov.ns.ca/hssc

www.nbsc-cvmnb.ca

www.lautorite.qc.ca

www.sfsc.gov.sk.ca

Background

The Instrument is designed to harmonize most of the requirements and restrictions governing take-over bids and issuer bids and related early warning requirements across all Canadian jurisdictions, including the four jurisdictions that do not currently regulate bids.

To achieve harmonization, amendments will be needed to securities legislation in those jurisdictions that currently regulate bids. The CSA have recommended to their respective governments legislative amendments and rule-making authority that would remove detailed bid provisions from statutes and substitute general "platform" provisions to enable regulators to harmonize, streamline and update bid requirements in a national rule. Provincial and territorial governments have agreed, in principle, with CSA efforts to further harmonize and streamline securities laws and are considering the proposed Act amendments with a target implementation date by the end of 2006.

Local regulations and rules governing take-over bids and issuer bids in certain jurisdictions will also be repealed. Notice of those proposed repeals may be published separately in each jurisdiction.

Purpose and Benefits

The Instrument will eliminate duplication and inconsistencies in existing take-over bid and issuer bid regimes and codify discretionary exemptions that we have routinely granted.

At present, nine jurisdictions have similar but not identical take-over bid and issuer bid requirements. Offerors that wish to conduct a multi-jurisdictional take-over bid or issuer bid must familiarize themselves with the regimes of the jurisdictions in which offeree security holders are located. This typically necessitates consulting the various acts, regulations and rules of the different jurisdictions. On implementation of the Instrument, offerors and other market participants will generally have to look no further than the Instrument for a single set of requirements and restrictions governing a bid made in Canada.

Where possible, we have organized existing requirements, restrictions and exemptions in chronological order to make them more straightforward. We have modified the scope of various current exemptions and introduced several new exemptions in response to a number of relatively routine exemptive relief applications. These changes should yield additional benefits to market participants.

Summary of Key Features of the Instrument

Part 1 Definitions and Interpretation

Part 1 of the Instrument identifies defined terms used in the Instrument. We have added a definition of "person" that includes an individual, corporation, partnership, trust or fund for purposes of the Instrument. We have also modified the definition of issuer bid to exclude gifts and bids that are a step in a business combination or reorganization. We have also defined several terms such as "offer to acquire" and "offeror" for the purposes of the various *Securities Acts* and this Instrument.

For purposes of determining when a person is acting jointly or in concert, we have introduced a deeming provision in section 1.7 of the Instrument in respect of certain specified persons. Associates of the offeror will only be presumed to be acting jointly or in concert with the offeror, which for most jurisdictions represents no change. Under the existing securities legislation of most jurisdictions the following are presumed to be acting jointly or in concert with an offeror in determining whether the take-over bid and early warning thresholds have been triggered and integration requirements apply:

- (a) every person or company that, as a result of any agreement, commitment or understanding with the offeror or with any person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
- (b) every person or company, that as a result of any agreement, commitment or understanding with the offeror or with any person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any person acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer;
- (c) every affiliate of the offeror; and
- (d) every associate of the offeror.

However, under the existing securities legislation of at least one jurisdiction, both affiliates and associates of the offeror are currently deemed to be acting jointly or in concert with the offeror. The Instrument would establish a deeming provision for the persons or companies in paragraphs (a), (b) and (c). In most jurisdictions this change means that a deeming provision would replace a presumption for determining the status of persons or companies in paragraphs (a), (b) and (c) above, but in at least one jurisdiction, associates of an offeror would now only be presumed to be acting jointly or in concert instead of being deemed to be acting jointly or in concert with the offeror. In our view, these relationships are of such significance that any purchases made by persons in these circumstances should come within the ambit of the Instrument. The persons and companies identified in paragraph (d) would be subject to a rebuttable presumption due to the range of entities that might be caught by a deeming provision including persons who have no relevant connection to the acquisition activities of the offeror. Although a deeming provision may be the subject of exemptive relief, it is intended that a deeming provision cannot be rebutted by evidence to the contrary unlike a presumption.

Part 2 Bids

Part 2 of the Instrument consists of five divisions dealing with the formal bid process:

Division 1 - focuses on restrictions on acquisitions or sales prior to, during and after the bid. These restrictions are similar to the current restrictions on acquisitions found in existing take-over bid and issuer bid regimes.

Division 2 - outlines the procedures to be followed when making a bid, including making the bid to all security holders in Canada, methods for delivery of bid circulars and notices of change or variation, and obtaining the consent of experts. These procedures do not differ significantly from current procedures in place under existing bid regimes.

Division 3 - deals with the obligations of an offeree issuer relating to the preparation and delivery of a directors' circular and related notices of change or variation to its security holders. These obligations remain essentially unchanged from current obligations of offeree issuers under existing securities legislation.

Division 4 - sets out the obligations of the offeror, including requirements for identical consideration and adequate financial arrangements for cash bids, which are very similar to their current counterparts in existing legislation. We have, however, introduced some modifications to the current variation, collateral benefit and proportionate take-up and payment provisions.

A key change contained in Division 4 is the addition of the restriction in subsection 2.21(3) of the Instrument which restricts the type of variations to the terms of an offer that an offeror is permitted to make after a bid has commenced. An offeror would not be able to

- lower the consideration offered under the bid,
- change the form of consideration offered under the bid, other than to add to the consideration already offered under the bid,
- lower the proportion of outstanding securities for which the bid is made, or
- add new conditions.

The variations listed make the terms of the bid less favourable to offeree security holders. We are concerned that a notice of variation would not provide security holders of the offeree issuer with sufficient time or disclosure to consider these types of changes. We are seeking comment on whether changes of this nature to a bid are so fundamental to the bid that they should trigger a new bid.

The purpose of the bid requirements is to ensure that offeree security holders are provided with sufficient time and information to make an informed decision about tendering to the offer. Offerors have a responsibility to launch their bid on appropriate terms. These restrictions do not limit the type of conditions that an offeror can attach to a bid.

Current take-over bid requirements generally prohibit offeree security holders from being offered different consideration for their targeted securities. We frequently deal with the issue of whether employment contracts, often designed to encourage key personnel of the offeree issuer to remain in place in the event that a bid is successful, constitute a prohibited collateral benefit, and discretionary relief is often sought and routinely granted.

To address this issue, the collateral agreement prohibition in section 2.22 of the Instrument incorporates a provision that makes it clear that the collateral benefit prohibition under certain conditions excludes consideration offered and paid under employment compensation, severance or other employee benefit arrangements entered into with employees or directors of the offeree issuer. This should reduce or eliminate the necessity for discretionary relief. Coincidentally, the issue is also being considered in the US and we will monitor the US developments during our comment period.

The proportionate take-up and payment provision in section 2.23 of the Instrument has also been drafted to exclude the popular modified "dutch auction" process and odd lot purchases from the strict application of the proportionate take-up requirements to issuer bids. This change is intended to eliminate the need for exemptive relief under the existing requirement.

Division 5 - deals with bid mechanics such as the minimum deposit period, prohibition on take-up, withdrawal rights, take-up and payment for deposited securities, and return of deposited securities. Sections 2.30 and 2.31 are new provisions requiring the prompt issuance and filing of a news release on the expiry of a bid and when an offeror knows that it will not take-up securities deposited under a bid. The offeror must also promptly return the securities to the security holder.

Part 3 General

Part 3 contains provisions related to the language of bid documents, the filing of documents such as lock-up and support agreements by the offeror, and certification of circulars and notices by authorized officers and directors of the offeror or offeree issuer.

Section 3.3 imposes a new filing requirement under which an offeror would be obligated to file copies of documents related to the take-over bid, including agreements between an offeror and a security holder of the offeree issuer, directors or officers of the offeree issuer, the offeree issuer itself, or any other material agreement that the offeror has access to that affects control of the offeree issuer if those documents have not already been filed. The purpose of this requirement is to provide greater transparency regarding agreements that affect control as well as to address the ambiguity and mixed practice as to whether current early warning requirements require the filing of some of these agreements. Lastly, this requirement would create a more level playing field with merger and acquisition transactions subject to a vote of all shareholders as issuers are already obligated to file many of these documents under Part 12 of National Instrument 51-102 *Continuous Disclosure Obligations*, if they have access to them.

Section 3.4 of the Instrument obligates any non-corporate entity such as an income trust that is the target of a take-over bid to provide a list of its security holders at the request of the offeror. This will ensure that an offeror has the right to obtain a list of offeree security holders regardless of the structure of the offeree issuer.

Part 4 Required Forms

Part 4 of the Instrument identifies the five forms of circulars and notices required to be used by offerors and offeree issuers under the Instrument. These include a form of notice of change or variation. The existing notice of intention to make an issuer bid would be replaced by an obligation to promptly issue and file a news release.

Part 5 Exemptions

Part 5 sets out exemptions from the bid requirements in Part 2 of the Instrument, many of which are based on current exemptions in existing securities legislation. Notable changes have been made to the "private agreement" exemption and we have also added two new take-over bid and issuer bid exemptions.

Key features of various exemptions are summarized below:

- The “private agreement” exemption in section 5.3 of the Instrument, like its current counterpart, provides that an offer to purchase made to not more than 5 persons is exempt from the requirements of Part 2. We have addressed a current area of uncertainty by clarifying that the exemption cannot be relied on for additional purchases by the same offeror.

The Instrument provides that offerors relying on the “private agreement” exemption in section 5.3 must complete their purchases within 6 months of the initial purchase and are restricted to using the exemption only once in relation to that offeree issuer. There is a carve-out for intra-group transactions. The most significant proposed change is the restriction on the number of times an offeror may make use of the exemption. In our view, this restriction is necessary to ensure that the exemption is used for its original purpose of allowing limited transfers by groups of controlling security holders rather than for the purpose of avoiding the formal bid requirements by characterizing the bid as a series of exempt “private agreements”. Permitting an offeror to make continuous exempt purchases of a small number of securities effectively drains the control premium from minority security holders and is inconsistent with the equal treatment principles of the bid requirements.

- Sections 5.5 and 5.12 of the Instrument provide new exemptions for take-over bids and issuer bids where the bulk of the targeted securities (more than 90%) are held outside Canada and the offeror is a foreign issuer. These provisions allow a bid to be made to Canadian residents in accordance with the offeror’s home-jurisdiction rules, provided the consideration offered to Canadian residents is substantially similar to that offered to security holders in the offeror’s home jurisdiction.
- Sections 5.6 and 5.13 of the Instrument provide harmonized *de minimis* exemptions for take-over bids and issuer bids where there are fewer than 50 beneficial owners of securities of the targeted subject in the jurisdiction and their targeted securities held in the jurisdiction constitute less than 2% of the total outstanding.
- Section 5.8 of the Instrument provides an exemption for issuer bids where the acquisition is being made from current or former employees, executive officers, directors or consultants. This exemption has been expanded in scope to include executive officers, directors and consultants and tracks the wording of the exemption from the prospectus and registration requirements in section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

Part 6 Early Warning

The early warning provisions in existing securities legislation of those jurisdictions that currently regulate bids have been harmonized and moved into Part 6 of the Instrument.

Part 7 Exemption

Part 7 allows the regulator or securities regulatory authority to grant an exemption from the requirements of the Instrument.

Part 8 Transition

Part 8 provides for a transitional provision that will allow offerors that have commenced a bid under the existing bid requirements prior to the Instrument being implemented to complete their bid in accordance with the existing bid requirements.

Valuation

The Instrument does not address valuation and other requirements for insider bids and related party transactions (which may arise in a take-over bid) currently found in Ontario Securities Commission Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*, Quebec Regulation Q-27 *Respecting Protection of Minority Securityholders in the Course of Certain Transactions* and in TSX Venture Exchange Policy 5.9 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*. These rules and policy do not form part of the NI 62-104 harmonization project.

Forms

The Forms would modify and modernize the requirements of existing local forms in those jurisdictions that currently regulate bids.

Modifications to the Forms include the addition of general instructions at the beginning of each form, dealing with such things as defined terms, plain language, numbering and headings and incorporation of information by reference where appropriate. The prescribed statement of rights in each of the Forms has also been modified to include the right of price revision provided for under Quebec securities legislation.

Request for Comments

Form 62-104F1 sets out the disclosure required to be provided by an offeror in its take-over bid circular. A number of disclosure items in this form have been reordered and modified. The form explicitly permits offerors that are eligible to use the short form prospectus system under National Instrument 44-101 Short Form Prospectus Distributions to incorporate by reference previously filed information (such as financial statements) required where securities are provided as consideration.

Form 62-104F2 sets out the disclosure required to be provided by an issuer making an issuer bid. A number of disclosure items in this form have been reordered and modified. The form explicitly permits issuers that are eligible to use the short form prospectus system under National Instrument 44-101 Short Form Prospectus Distributions to incorporate by reference previously filed information (such as financial statements) required where securities are provided as consideration.

Form 62-104F3 sets out the disclosure required to be included in a circular prepared and circulated by the board of directors of an offeree issuer.

Form 62-104F4 sets out the disclosure required to be included in a individual director's or officer's circular.

Form 62-104F5 sets out the disclosure required to be included in a notice of change or variation.

Companion Policy

The Companion Policy provides guidance on how we will interpret and apply the Instrument and Forms. The contents of several CSA policies and notices have been modernized and incorporated into the companion policy. As a result, the following CSA policies and notices will be repealed or withdrawn:

- National Policy 62-201 *Bids Made Only in Certain Jurisdictions* (Policy 62-201),
- CSA Staff Notice 62-301 *Implementation of Zimmerman Amendments Governing the Conduct of Take-Over Bids and Issuer Bids*,
- CSA Staff Notice 62-303 *Identifying the Offeror in a Take-over Bid*, and
- CSA Staff Notice 62-304 *Conditions in Financing Arrangements for Take-over Bids and Issuer Bids*.

Related Amendments**Amendments to NI 62-103**

The Consequential Amendments would amend NI 62-103 to update definitions, early warning procedures and the various appendices. The text of the Consequential Amendments is set out in **Schedule 1** to this Notice.

Local Repeals

The list of proposed repeals of local take-over bid and issuer bid rules or regulations in a particular jurisdiction is set out in **Schedule 2** to this Notice published in that particular jurisdiction or may be published separately in each jurisdiction. Some jurisdictions may need to implement the Instrument using a local implementing rule. Jurisdictions that must do so will separately publish the implementing rule.

Alternatives Considered

No other alternatives were considered.

Anticipated Costs and Benefits

The Instrument and Forms will harmonize and modify most of the requirements and restrictions governing take-over bids, issuer bids and related early warning requirements across Canadian jurisdictions. We believe that harmonizing these requirements will ease the regulatory burden of issuers by reducing the sheer number of requirements that would otherwise require consideration. Modifications to the existing requirements and restrictions include changing the scope of certain current exemptions and the introduction of several new exemptions in response to routine exemptive relief applications. In our view, the Instrument and Forms will impose little, if any, additional costs on market participants.

Unpublished Materials

No unpublished study, report, or other written materials were relied on in proposing the Instrument, Forms, Companion Policy, Consequential Amendments or the repeal of Policy 62-201.

Request for Comment

We request your comments on the Instrument and related amendments to NI 62-103. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. *Acting jointly or in concert* – When determining whether or not certain persons are acting jointly or in concert with an offeror, is the proposed distinction between the use of a rebuttable presumption and a deeming provision appropriate with respect to the various persons listed? If so, why? If not, why not?
2. *Restriction on variation of bids* – Are the proposed restrictions on certain variations of bids appropriate? If so, why? If not, why not?
3. *Collateral benefit prohibition* – Does the new collateral agreement provision in section 2.22 of the Instrument provide appropriate relief? If so, why? If not, why not?
4. *Filing agreements* – Does the new requirement in section 3.2 of the Instrument to file agreements related to a take-over bid meet the stated policy objectives? If so, why? If not, why not?
5. *Private agreement exemption* – Does the proposed amendment to the private agreement exemption meet the policy objectives of the exemption? Given the relative reduction in levels of commissions and brokerage fees and the general increase in liquidity since the private agreement exemption was first established, is the maximum 15% premium (including brokerage fees or commissions) to the market price of the securities acquired currently allowed by the exemption excessive? Would a 10% maximum premium be preferable? Should the exemption be eliminated entirely? If so, why? If not, why not?
6. *Early warning system* – Should the early warning requirements be located in NI 62-103 with other related early warning matters rather than in Part 6 of the Instrument. If so, why?

How to Provide Your Comments

Please provide your comments by July 28, 2006.

Please e-mail your submission as indicated below, but address your submission to all of the CSA member commissions, as follows:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marchés financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the two addresses that follow, and they will be distributed to all other jurisdictions by CSA staff.

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Request for Comments

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If you are not able to send your comments by e-mail, please send a diskette containing your comments in Word.

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

Questions

Questions relating to this notice may be referred to:

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Request for Comments

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SCHEDULE 1

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

PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 62-103

1.1 **Amendment** - National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* is amended to:

- (a) in section 1.1(1)
- (i) in the definition of "acquisition announcement provisions" strike the first reference to "securities legislation" and substitute "section 6.3 of NI 62-104" and strike the second reference to "securities legislation" and substitute "NI 62-104";
 - (ii) repeal the definition of "acting jointly or in concert" and substitute the following:

"acting jointly or in concert" has the same meaning as given the phrase in NI 62-104, and, when used in connection with an entity, has the same meaning as in NI 62-104 as if the term "entity" replaced the term "person or company" or similar term;
 - (iii) in the definition of "applicable definitions" strike "the take-over bid" and substitute "NI 62-104";
 - (iv) add the following after the definition of "applicable provisions":

"associate" has the same meaning as in NI 62-104;
 - (v) repeal the definition of "early warning requirements" and substitute the following:

"early warning requirements" means the requirements set out in Part 6 of NI 62-104;
 - (vi) repeal the definition of "equity security" and substitute the following:

"equity security" has the same meaning as in NI 62-104;
 - (vii) repeal the definition of "formal bid" and substitute the following:

"formal bid" means a take-over bid or issuer bid made in accordance with Part 2 of NI 62-104;
 - (viii) repeal the definition of "moratorium provision" and substitute the following:

"moratorium provision" means the provisions set out in subsection 6.2(4) of NI 62-104;
 - (ix) add the following after the definition of "news release":

"NI 62-104" means National Instrument 62-104 *Take-Over Bids and Issuer Bids*;
 - (x) repeal the definition of "offeror" and substitute the following:

"offeror" has the same meaning as in NI 62-104;
 - (xi) repeal the definition of "offeror's securities" and substitute the following:

"offeror's securities" has the same meaning as in NI 62-104;
 - (xii) repeal the definition of "private mutual fund" and substitute:

"private mutual fund" means

 - (a) a private investment club referred to in section 2.20 of National Instrument 45-106 *Prospectus and Registration Exemptions*, or

- (b) a private investment fund referred to in section 2.21 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
- (xiii) repeal the definition of "take-over provisions" and substitute the following:
 - "take-over provisions" means the provisions set out in NI 62-104;
- (b) in subsection 2.1(1), strike "or under section 2.1 of National Instrument 62-102 *Disclosure of Outstanding Share Data or*" and ", whichever contains the most recent relevant information";
- (c) in paragraph 3.1(2)(a), strike "securities legislation" and substitute "section 6.2 or 6.3 of NI 62-104";
- (d) in paragraph 3.2(b), strike "securities legislation" and substitute "section 6.2 or 6.3 of NI 62-104";
- (e) in paragraph 5.1(b), strike "the presumption in securities legislation " and substitute "the deeming provision in subsection 1.7(2) of NI 62-104" and strike "presumed" and substitute "deemed";
- (f) in section 10.1, strike "moratorium provisions" and substitute "moratorium provision" everywhere that term appears;
- (g) repeal Appendix B;
- (h) repeal Appendix C;
- (i) repeal Appendix D and substitute:

**NATIONAL INSTRUMENT 62-103
APPENDIX D
BENEFICIAL OWNERSHIP**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALL JURISDICTIONS	Sections 1.6 and 1.7 of NI 62-104
ALBERTA	Sections 5 and 6 of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Subsection 1(4) of the <i>Securities Act</i> (British Columbia)
MANITOBA	Subsections 1(6) and 1(7) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Subsections 1(5) and 1(6) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Subsections 2(5) and 2(6) of the <i>Securities Act</i> (Newfoundland and Labrador)
NOVA SCOTIA	Subsections 2(5) and 2(6) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Subsections 1(5) and 1(6) of the <i>Securities Act</i> (Ontario)
SASKATCHEWAN	Subsections 2(5) and 2(6) of <i>The Securities Act, 1988</i> (Saskatchewan)

- (j) in Appendix E,
 - (i) add the following after paragraph (e):
 - (e.1) the value, in Canadian dollars, of any consideration offered per security if the offeror acquired ownership of a security in the transaction or occurrence giving rise to the obligation to file a news release;
 - (ii) in paragraph (i), add ", in Canadian dollars" after "value" and strike "and" at the end of the paragraph;
 - (iii) add the following after paragraph (j):

- (k) if applicable, a description of the exemption under Part 5 of NI 62-104 being relied on by the offeror and the facts supporting that reliance.

PART 2 EFFECTIVE DATE

2.1 Effective Date - These amendments are effective ●.

SCHEDULE 2

**RELATED AMENDMENTS TO ONTARIO SECURITIES
RULES AND REGULATION AND ADDITIONAL
INFORMATION REQUIRED IN ONTARIO**

Provisions of Regulation to be Revoked or Amended

The Ontario Securities Commission (the Commission) proposes to revoke the following provisions of the Regulation made under the *Securities Act* (Ontario) (the Act) R.R.O. 1990 Reg. 1015, as am. (the Regulation):

- sections 183-189, 193-196, 198, and 200-203
- Forms 31, 32, 33, 34 and 35

The Commission proposes to amend the following provisions of the Regulation so that they refer to the corresponding provisions in the Instrument:

- section 43
- subsection 252(2)

Authority

To achieve harmonization, amendments will be needed to securities legislation in those jurisdictions that currently regulate bids. The CSA have recommended to their respective governments legislative amendments and rule-making authority that would remove detailed bid provisions from statutes and substitute general "platform" provisions to enable regulators to harmonize, streamline and update bid requirements in a national rule. Provincial and territorial governments have agreed, in principle, with CSA efforts to further harmonize and streamline securities laws and are considering the proposed Act amendments with a target date by the end of 2006. The Commission will publish a notice referring to the specific provisions of the Act, if amended, providing authority for the Commission to make the Instrument, the Forms and the Consequential Amendments.

The provisions of the Act that currently provide the Commission with rule making authority with respect to take-over bids and issuer bids are as follows:

- Paragraph 143(1)28 authorizes the Commission to make rules regulating take-over bids and issuer bids, including: (i) providing for exemptions, in addition to those set out in subsections 93(1) and (3) of the Act, or removing any exemption set out in those subsections; (ii) varying the requirements of or providing for exemptions from section 94 of the Act or removing any exemption set out in that section; (iii) varying the requirements set out in sections 95, 96, 97, 98, 99 or 100 of the Act or providing exemptions therefrom; (iv) varying the requirements of or providing exemptions from section 101 of the Act; (v) varying any or all of the time periods in Part XX of the Act; and (vi) prescribing manners of disseminating advertisements in accordance with subsection 100 (7) of the Act.
- Paragraph 143(1)39 authorizes the 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 Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including take-over bid circulars, issuer bid circulars and directors' circulars.
- Paragraph 143(1)39.1 authorizes the Commission to make rules governing the approval of any document described in paragraph 143(1) 39.

NATIONAL INSTRUMENT 62-104

TAKE-OVER BIDS AND ISSUER BIDS

(PUBLICATION FOR COMMENT DRAFT - APRIL 28, 2006)

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NATIONAL INSTRUMENT 62-104

TAKE-OVER BIDS AND ISSUER BIDS

(PUBLICATION FOR COMMENT DRAFT - APRIL 28, 2006)

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 For the purposes of this Instrument

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

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

if the relative has the same home as that person;

“bid” means a take-over bid or an issuer bid;

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

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

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

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons, any of whom are in the local jurisdiction and also includes an acquisition or redemption of securities of the issuer by the issuer from those persons, but does not include an offer to acquire, acquisition or redemption

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

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“offer to acquire” means

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

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

“offeror” means a person that makes a take-over bid, an issuer bid or other offer to acquire;

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

“person” includes

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

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

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

“recognized exchange” means either the Toronto Stock Exchange or the TSX Venture Exchange;

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

“take-over bid” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons, any of whom are in the local jurisdiction, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.

Definitions for purposes of the Act

1.2 (1) For the purposes of the Act,

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

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

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

Controlled Entities

1.3 An issuer is controlled by a person if

- (a) voting securities of the issuer are held, other than by way of security only, by or for the benefit of that person, and
- (b) the voting rights attached to those voting securities are entitled, if exercised, to elect a majority of the directors of the issuer.

Computation of time and expiry of bid

1.4 In this Instrument,

- (a) a period of days is to be computed as

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- (i) beginning on the day following the event that began the period, and
 - (ii) ending at 5:00 p.m. on the last day of the period if that day is a business day or ending at 5:00 p.m. on the next business day if the last day of the period does not fall on a business day; and
- (b) a bid expires at the later of
- (i) the end of the period, including any extension, during which securities may be deposited pursuant to the bid, and
 - (ii) the time at which the offeror becomes obligated by the terms of the bid to take up or reject securities deposited under the bid.

Convertible securities

1.5 In this Instrument,

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

Deemed beneficial ownership

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

(2) A security or right or obligation described in subsection (1) is deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of the offeror's offer to acquire or acquisition.

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

Acting jointly or in concert

1.7 (1) For the purposes of this Instrument, it is a question of fact as to whether a person is acting jointly or in concert with an offeror.

(2) The following are deemed to be acting jointly or in concert with an offeror:

- (a) every person that, as a result of any agreement, commitment or understanding with the offeror or with any person acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
- (b) every person that, as a result of any agreement, commitment or understanding with the offeror or with any person acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any person acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer; and
- (c) every affiliate of the offeror.

(3) Every associate of the offeror is presumed to be acting jointly or in concert with the offeror.

(4) Despite subsection (2) or (3), a registered dealer acting solely in an agency capacity for the offeror in connection with a bid and not executing principal transactions in the class of securities subject to the offer to acquire or performing services beyond customary dealer's functions is not to be deemed or presumed, as the case may be, solely by reason of the agency relationship to be acting jointly or in concert with the offeror in connection with the bid.

Application to direct or indirect offers

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

PART 2 BIDS

Division 1: Restrictions on Acquisitions or Sales

Definition of offeror

2.1 In this Division, “*offeror*” means

- (a) an offeror making a bid that is not exempt under Part 5,
- (b) a person acting jointly or in concert with an offeror referred to in paragraph (a),
- (c) a control person, or an affiliate of a control person, of an offeror referred to in paragraph (a), or
- (d) a person that has a relationship described in paragraphs 1.7(2)(a) or (b) with a control person of an offeror referred to in paragraph (a).

Restrictions on acquisitions during take-over bid

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

(2) Subsection (1) does not apply to an agreement between a security holder and the offeror to the effect that the security holder will, in accordance with the terms and conditions of a take-over bid that is not exempt under Part 5, deposit the security holder’s securities under the bid.

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

- (a) the intention to make those purchases is stated in the take-over bid circular,
- (b) the aggregate number of securities beneficially acquired under this subsection does not constitute in excess of 5% of the outstanding securities of that class as at the date of the bid,
- (c) the purchases are made in the normal course through the facilities of a recognized exchange,
- (d) the offeror issues and files a news release immediately after the close of business of the recognized exchange on each day on which securities have been purchased under this subsection disclosing the following information:
 - (i) the name of the purchaser,
 - (ii) if the purchaser is a person referred to in paragraph 2.1(b), (c) or (d), the relationship of the purchaser and the offeror,
 - (iii) the number of securities purchased on the day for which the news release is required,
 - (iv) the highest price paid for the securities on the day for which the news release is required,
 - (v) the aggregate number of securities purchased through the facilities of the recognized exchange,
 - (vi) the average price paid for the securities that were purchased through the facilities of the exchange, and

- (vii) the total number of securities owned by the purchaser after giving effect to the purchases that are the subject of the news release,
- (e) any broker acting for the offeror does not, in regard to the purchases, perform services beyond the customary broker's functions and does not receive more than the usual fees or commissions charged for comparable services performed by the broker in the normal course,
- (f) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the take-over bid, and
- (g) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

Restrictions on acquisitions during issuer bid

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

(2) Subsection (1) does not prevent the offeror from purchasing, redeeming or otherwise acquiring any securities of the class subject to the bid during this period in reliance on an exemption under paragraph 5.7(a), (b) or (c).

Restrictions on pre-bid and post-bid acquisitions during take-over bid

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

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

(2) Subsection (1) does not apply if the transaction that occurred within 90 days immediately preceding the bid was

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

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

(4) Despite subsections (1) and (3), an offeror may make purchases in the normal course through the facilities of a recognized exchange if

- (a) any broker acting for the offeror does not, in regard to the purchases, perform services beyond the customary broker's functions and does not receive more than the usual fees or commissions charged for comparable services performed by the broker in the normal course,

- (b) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the take-over bid, and
- (c) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

Sales during bid prohibited

2.5 (1) Except pursuant to the bid, an offeror must not sell, or make or enter into an arrangement, agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry.

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

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

Division 2: Making a Bid

Bid made to all security holders

2.6 An offeror must make the bid to all holders of the class of securities subject to the bid who are in the local jurisdiction by sending the bid to

- (a) the holders of that class of securities whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and
- (b) the holders of securities that, before the expiry of the deposit period referred to in section 2.25, are convertible into securities of that class, whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

Commencement of bid

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

- (a) publishing an advertisement containing a summary of the take-over bid in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction, and in Québec, a daily French language newspaper, or
- (b) sending the take-over bid to security holders as required by section 2.6.

(2) An issuer bid must be commenced by sending the bid to security holders as required by section 2.6.

Offeror's circular

2.8 (1) An offeror must send, with or as part of a take-over bid or issuer bid, a bid circular in the required form.

(2) If a take-over bid is commenced by way of an advertisement under paragraph 2.7(1)(a), the offeror must

- (a) on or before the date of first publication of the advertisement, deliver the bid to the offeree issuer's principal office and file the bid and the advertisement,
- (b) on or before the date of first publication of the advertisement, request from the offeree issuer a list of security holders referred to in section 2.6, and
- (c) not later than 2 business days after receipt of the list of security holders referred to in paragraph (b), send the bid, including the bid circular, to those security holders.

(3) If a take-over bid is commenced under paragraph 2.7(1)(b), the offeror must file the bid and deliver it to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that.

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

Change in Information

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

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

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

(3) For the purposes of this section, a change in information does not include a variation in the terms of the bid.

(4) A notice of change must be in the required form.

Variation of terms

2.10 (1) If there is a variation in the terms of a bid, including any extension of the period during which securities may be deposited under the bid, and whether or not that variation results from the exercise of any right contained in the bid, the offeror must promptly issue and file a news release and deliver a notice of variation to every person to whom the bid circular was required to be sent under section 2.6 and whose securities were not taken up before the date of the variation.

(2) A notice of variation must be in the required form.

(3) If there is a variation in the terms of a bid, the period during which securities may be deposited pursuant to the bid must not expire before 10 days after the sending of the notice of variation.

(4) Subsection (3) does not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid resulting from the waiver where the consideration offered for the securities consists solely of cash.

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

(6) If there is a variation in the terms of a bid that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, subsection (1) does not apply in respect of that bid if

- (a) the waiver occurs, and the offeror has promptly issued and filed a news release announcing the waiver, and
- (b) the consideration offered for the securities consists solely of cash.

Notice of change or variation - filing and sending requirements

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

Change or variation in advertised take-over bid

2.12 (1) If a change or variation occurs to a take-over bid that has been advertised in accordance with subsection 2.8(2), and the offeror has complied with paragraphs (a) and (b) of that subsection but has not yet delivered the bid under paragraph (c) of that subsection, the offeror must

- (a) publish an advertisement that contains a brief summary of the change or variation in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction and, in Québec, a daily French language newspaper,

- (b) concurrently with the date of first publication of the advertisement,
 - (i) file the advertisement, and
 - (ii) file and send the notice of change or notice of variation to the offeree issuer's principal office, and
- (c) subsequently send the bid and the notice of change or notice of variation to the security holders of the offeree issuer before the expiration of the period prescribed under paragraph 2.8(2)(c).

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or variation is not required to be filed and sent under section 2.11.

Consent of expert to use of name

2.13 (1) In this section and section 2.19, an expert includes any solicitor, and a notary in Québec, auditor, accountant, engineer, geologist or appraiser or any other person whose profession or business gives authority to a report, appraisal or statement made by that person.

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

Methods of delivery of bid documents

2.14 (1) A bid, a bid circular and every notice of change or variation in relation to the bid or bid circular must be

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

(2) Any bid, bid circular or notice sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it, except for a take-over bid commenced in accordance with paragraph 2.7(1)(a), in which case the bid, bid circular or notice is deemed to have been dated as of the date of first publication of the relevant advertisement.

Division 3: Offeree Issuer's Obligations

Directors' circular

2.15 (1) If a take-over bid has been made, the board of directors of the offeree issuer must send a directors' circular to every person to whom a take-over bid was required to be sent under section 2.6 not later than 15 days after the date of the bid.

(2) The board of directors must include in a directors' circular either

- (a) a recommendation to accept or to reject a take-over bid and the reasons for the recommendation, or
- (b) a statement that they are unable to make, or are not making, a recommendation and the reasons for not making a recommendation.

(3) If a board of directors is considering recommending acceptance or rejection of a take-over bid after the sending of the directors' circular, it

- (a) must, at the time of sending the circular, advise the security holders of this fact, and
- (b) may advise them not to tender their securities until further communication is received from the directors.

(4) If subsection (3) applies, the board of directors must deliver the recommendation or the decision not to make recommendation at least 7 days before the scheduled expiry of the period during which securities may be deposited under the bid.

(5) A directors' circular must be in the required form.

Notice of change

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

(2) A notice of change in relation to it must be in the required form.

Filing directors' notice of change

2.17 The board of directors of the offeree issuer must concurrently file the directors' circular or a notice of change in relation to it and deliver it to the principal office of the offeror no later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that.

Director's or officer's circular

2.18 (1) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a separate director's or officer's circular to every person to whom a take-over bid was required to be sent under section 2.6.

(2) If, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid, a change has occurred in the information contained in an individual director's or officer's circular or any notice of change in relation to it that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, that individual director or officer must immediately deliver a notice of change to every person to whom a bid circular was required to be sent under section 2.6.

(3) If an individual director or officer submits a circular under subsection (1) or a notice of change under subsection (2) to the board of directors, the board, at the offeree issuer's expense, must send a copy of the circular or notice to every person to whom a take-over bid was required to be sent under section 2.6.

(4) The board of directors of the offeree issuer or the individual director or officer, as the case may be, must concurrently file the director's or officer's circular or a notice of change in relation to it and send it to the principal office of the offeror no later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that.

(5) A director or officer's circular or a notice of change in relation to it must be in the required form.

Consent of expert to use of name

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

Methods of delivery of offeree issuer's documents

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

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

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

Division 4: Offeror's Obligations

Bid consideration

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

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

(3) After a bid has been commenced, an offeror must not

- (a) lower the consideration offered under the bid,
- (b) change the form of consideration offered under the bid, other than to add to the consideration already offered under the bid,
- (c) lower the proportion of outstanding securities for which the bid is made, or
- (d) add new conditions.

Collateral Agreements

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

(2) If an offeror makes or intends to make a bid, neither the offeror nor any person acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.

(3) Subsection (2) does not apply if the agreement, commitment or understanding relates to:

- (a) a payment or distribution per equity security that is identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,
- (b) an enhancement of employee benefits resulting from participation by the holder of securities of the offeree issuer in a group plan, other than an incentive plan, for employees of a successor to the business of the offeree issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the offeree issuer who hold positions of a similar nature to the position held by the security holder, or
- (c) a benefit, not described in paragraph (b), that is received solely in connection with the security holder's services as an employee, director or consultant of the offeree issuer, of an affiliated entity of the offeree issuer, or of a successor to the business of the offeree issuer, if
 - (i) the benefit is not conferred for the purpose, in whole or in part, of increasing the value of the consideration paid to the security holder for securities tendered under the bid or providing an incentive to tender to the bid,
 - (ii) the conferring of the benefit is not, by its terms, conditional on the security holder supporting the bid in any manner,
 - (iii) full particulars of the benefit are disclosed in the issuer bid circular or, in the case of a take-over bid, in the directors' circular, and
 - (iv) either
 - (A) at the time the bid is publicly announced, the security holder and its associated entities beneficially own or exercise control or direction over less than one per cent of the outstanding securities of each class of equity securities of the offeree issuer, or
 - (B) if the offeree issuer has an independent committee of directors,
 - (i) the security holder discloses to the independent committee of the offeree issuer the amount of consideration that the security holder expects it will be beneficially

entitled to receive under the terms of the bid in exchange for the equity securities beneficially owned by the security holder,

- (II) the independent committee, acting in good faith, determines that the value of the benefit, net of any offsetting costs to the security holder, is less than five per cent of the value referred to in clause (A), and
- (III) the independent committee's determination is disclosed in the issuer bid circular or, in the case of a take-over bid, in the directors' circular.

Proportionate take-up and payment

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

(2) Subsection (1) does not apply if an issuer, under the terms of an issuer bid, acquires securities that, if not acquired, would constitute an odd lot for the security holder.

(3) Subsection (1) does not apply if an issuer, under the terms of an issuer bid, acquires securities, if security holders who deposit securities under the bid are entitled to elect a minimum price per security, within a range of prices, at which they are willing to sell their securities under the bid and a security holder elects a minimum price which is higher than the price that the offeror pays for securities under the bid.

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

Financing arrangements

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

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

Division 5: Bid Mechanics

Minimum deposit period

2.25 An offeror must allow securities to be deposited pursuant to the bid for at least 35 days from the date of the bid.

Prohibition on take-up

2.26 An offeror must not take-up securities deposited under the bid until the expiration of 35 days from the date of the bid.

Withdrawal

2.27 (1) A security holder may withdraw securities deposited under the bid

- (a) at any time before the securities have been taken up by the offeror,
- (b) at any time before the expiration of 10 days from the date of a notice of change under section 2.9 or a notice of variation under section 2.10, or
- (c) if the securities have not been paid for by the offeror within 3 business days after the securities have been taken up.

(2) The right of withdrawal under paragraph (1)(b) does not apply

- (a) if the securities have been taken up by the offeror before the date of the change or variation,

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- (b) if a variation in the terms of a bid consists only of an increase in consideration offered for the securities and an extension of the time for deposit to no later than 10 days after the notice of variation has been sent, or
- (c) if a variation is limited to the waiver of one of the terms of a bid where the consideration consists solely of cash.

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

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

Effect of market purchases

2.28 If an offeror purchases securities as permitted by section 2.2(3), those purchased securities must be counted in determining whether a condition as to the minimum number of securities to be deposited to the bid has been fulfilled, but must not reduce the number of securities the offeror is bound to take up under the bid.

Take-up and payment for deposited securities

2.29 (1) The offeror must take up and pay for securities deposited under the bid, if all the terms and conditions of the bid have been complied with or waived, not later than 10 days after the expiry of the bid or the earlier time as may be required by subsection (2) or (3).

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

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

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

(5) Despite subsections (3) and (4), if a bid is made for less than all of the class of securities subject to the bid, an offeror is only required to take up, by the times specified in those subsections, the maximum number of securities that the offeror can take up without contravening section 2.21 or 2.23.

(6) Despite subsection (4), if the offeror waives any terms or conditions of a bid and extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.27(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the right of withdrawal.

Return of deposited securities

2.30 If an offeror knows that it will not take-up securities deposited under the bid, the offeror must promptly issue and file a news release to that effect and return the securities to the security holders.

News release required on expiry of bid

2.31 If all terms and conditions of the bid have been complied with or waived, the offeror must issue and file a news release to that effect promptly after the expiry of the bid, which news release must disclose

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

PART 3 GENERAL**Language of bid documents**

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

(2) In Québec, the take-over bid circular, issuer bid circular, directors' circular, director's or officer's circular, notice of change or notice of variation required under this Instrument must be in the French language or in both French and English languages.

(3) Subsection (1) does not apply to an exempt take-over bid made under section 5.5, or an exempt issuer bid made under section 5.12.

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

Filing Agreements

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

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

(2) The documents required to be filed under subsection (1) must be filed on the day the take-over bid circular is filed under section 2.8 or as soon as practicable after that.

Certification

3.3 (1) Every person required to file and send a take-over bid circular, issuer bid circular or a notice of change or notice of variation in respect of a bid circular under this Instrument must ensure that the circular or notice contains a certificate in the required form and signed by each of the following:

- (a) the chief executive officer or, in the case of a person that does not have a chief executive officer, the individual who performs similar functions to a chief executive officer,
- (b) the chief financial officer or, in the case of a person that does not have a chief financial officer, the individual who performs similar functions to a chief financial officer, and
- (c) two directors, other than the chief executive officer and the chief financial officer, who are duly authorized by the directors of that person to sign on their behalf.

(2) Every person required to file and send a directors' circular or a notice of change in respect of a directors' circular under this Instrument must ensure that the circular or notice contains a certificate in the required form and signed by two directors who are duly authorized by the directors of that person to sign on their behalf.

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

(4) If the regulator is satisfied on evidence or submissions made to the regulator that a chief executive officer or chief financial officer is, for adequate cause, not available to sign a certificate required under this Instrument, the regulator may permit the certificate to be signed by another responsible officer or director.

Obligation to furnish security holder list

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

(2) For the purposes of subsection (1), the provisions of section 21 of the *Canada Business Corporations Act* apply with appropriate modifications, except that the affidavit that accompanies the request for the list of security holders must state that the list will not be used except in connection with a bid made under Part 2 for securities of the issuer.

PART 4 REQUIRED FORMS

Take-over bid circular

4.1 The required form of take-over bid circular under section 2.8 is Form 62-104F1.

Issuer bid circular

4.2 The required form of issuer bid circular under section 2.8 is Form 62-104F2.

Directors' circular

4.3 The required form of directors' circular under section 2.15 is Form 62-104F3.

Director's or officer's circular

4.4 The required form of director's or officer's circular under section 2.18 is Form 62-104F4.

Notice of change or notice of variation

4.5 The required form of notice of change under section 2.9 and 2.16 and subsection 2.18(5) or notice of variation under section 2.10 is Form 62-104F5.

PART 5 EXEMPTIONS

Division 1: Interpretation

Market price

5.1 (1) The market price of a class of securities for which there is a published market, at any date, is an amount equal to the simple average of the closing price of securities of that class for each of the business days on which there was a closing price in the 20 business days preceding that date.

(2) If a published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the market price of the securities, at any date, is an amount equal to the average of the simple averages of the highest and lowest prices for each of the business days on which there were highest and lowest prices in the 20 business days preceding that date.

(3) If there has been trading of securities in a published market for fewer than 10 of the 20 business days preceding the date as of which the market price of the securities is being determined, the market price is the average of the following prices established for each day of the 20 business days preceding that date:

- (a) the average of the closing bid and ask prices for each day on which there was no trading,
- (b) either
 - (i) the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price, or
 - (ii) the average of the highest and lowest prices of securities of that class for each day that there has been trading, if the published market provides only the highest and lowest prices of securities traded on a particular day.

(4) If there is more than one published market for a security, the market price for the purposes of subsections (1), (2) and (3) must be determined as follows:

- (a) if only one of the published markets is in Canada, the market price must be determined solely by reference to that market,
- (b) if there is more than one published market in Canada, the market price must be determined solely by reference to the published market in Canada on which the greatest dollar volume of trading in the particular class of securities occurred during the 20 business days preceding the date as of which the market price is being determined, or

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

(5) Despite subsections (1), (2), (3) and (4), for the purpose of section 5.2, if an offeror acquires securities on a published market, the market price for those securities is the price of the last board lot of securities of that class purchased, before the acquisition by the offeror, by a person that was not acting jointly or in concert with the offeror.

(6) In the case of a class of equity securities that is not traded on a published market and is convertible into a class of equity securities traded on a published market, the market price of the convertible security must be based on the market price of that class of equity securities determined in accordance with this section.

Division 2: Exempt take-over bids

Normal course purchase exemption

5.2 A take-over bid is exempt from Part 2 if:

- (a) the bid is for not more than 5% of the outstanding securities of a class of securities of the offeree issuer,
- (b) the aggregate number of securities acquired in reliance on this exemption by the offeror and any person acting jointly or in concert with the offeror within any period of 12 months, when aggregated with acquisitions otherwise made by the offeror and any person acting jointly or in concert with the offeror within the same 12 month period other than under a bid that is subject to the requirements in Part 2, does not constitute a total number of securities in excess of 5% of the outstanding securities of that class at the beginning of the period,
- (c) there is a published market for the class of securities that are the subject of the bid, and
- (d) the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with section 5.1, plus reasonable brokerage fees or commissions actually paid.

Private agreement exemption

5.3 (1) A take-over bid is exempt from Part 2 if:

- (a) purchases are made from not more than 5 persons in the aggregate, including persons located outside the local jurisdiction,
- (b) all of the purchases referred to in paragraph (a) are negotiated at approximately the same time and are completed within 6 months of the first purchase under this exemption,
- (c) the bid is not made generally to security holders of the class of securities that is the subject of the bid, provided there are more than 5 security holders of the class,
- (d) there is a published market for the securities acquired, the value of the consideration paid for any of the securities, including brokerage fees or commissions, is not greater than 115% of the market price of securities of that class at the date of the acceptance of the bid, determined in accordance with section 5.1, and
- (e) there is no published market for the securities acquired, there is a reasonable basis for determining that the value of the consideration paid for any of the securities is not greater than 115% of the value of the securities.

(2) An offeror, and a person acting jointly or in concert with an offeror, that relies on the exemption referred to in subsection (1) is not entitled to subsequently rely on this exemption to purchase additional securities of the same issuer or a successor to that issuer, but this restriction does not apply to trades between affiliates or between a person and its associate.

(3) For the purposes of subsection (1), if an offeror makes an offer to acquire securities from a person and the offeror knows or ought to know after reasonable inquiry

- (a) that the person from whom the acquisition is being made is acting as a nominee, agent, trustee, executor, administrator or other legal representative for one or more other persons having a direct beneficial interest in those securities, then each of those other persons must be included in the determination of the number of persons to which an offer to acquire has been made, or

- (b) that the person acquired the securities in order that the offeror might make use of the exemption under subsection (1), then each person from whom those securities were acquired must be included in the determination of the number of persons to whom an offer to acquire has been made.

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

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

Non-reporting issuer exemption

5.4 A take-over bid is exempt from Part 2 if:

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

Foreign take-over bid exemption

5.5 A take-over bid is exempt from Part 2 if:

- (a) persons whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid,
- (b) the offeror reasonably believes that Canadian security holders beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid,
- (c) the published market on which the greatest dollar volume of trading in securities of that class occurred during the 12 months immediately preceding the date of the bid was not in Canada,
- (d) security holders in Canada are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders,
- (e) all of the material relating to the bid that is sent by or on behalf of the offeror is concurrently sent to security holders whose last address as shown on the books of the offeree issuer is in Canada and filed, and
- (f) if the materials referred to in paragraph (e) are published in its home jurisdiction, the offeror publishes the information in Canada in a manner reasonably calculated to inform Canadian security holders of the bid.

De minimis exemption

5.6 A take-over bid is exempt from Part 2 in a local jurisdiction if:

- (a) the number of beneficial owners of securities of the class of securities subject to the bid in the local jurisdiction is fewer than 50,
- (b) the securities held by the beneficial owners referred to in paragraph (a) constitute, in aggregate, less than 2% of the outstanding securities of that class,
- (c) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders, and

- (d) all the material relating to the bid that is sent by or on behalf of the offeror to holders of securities of the class of securities subject to the bid is concurrently filed and sent to security holders in the local jurisdiction.

Division 3: Exempt issuer bids

Issuer acquisition or redemption exemption

5.7 An issuer bid for a class of securities is exempted from the requirements of Part 2 if:

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

Employee, executive officer, director and consultant exemption

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

- (a) the value of the consideration paid for any of the securities acquired is not greater than the market price of the securities at the date of the acquisition, determined in accordance with section 5.1, and
- (b) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the exemption provided by this paragraph is not greater than 5% of the securities of that class issued and outstanding at the beginning of the 12-month period.

(2) For the purposes of this section, “**consultant**” has the same meaning as it has in National Instrument 45-106 *Prospectus and Registration Exemptions*.

Normal course issuer bid exemption

5.9 (1) An issuer bid is exempt from the requirements of Part 2 if:

- (a) the issuer purchases securities in the normal course on a published market,
- (b) the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer,
- (c) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired in reliance on this exemption by the offeror and any person acting jointly or in concert with the offeror within any period of 12 months, when aggregated with acquisitions otherwise made by the offeror and any person acting jointly or in concert with the offeror within the same 12 month period, other than under a bid that is subject to the requirements in Part 2, does not constitute a total number of securities in excess of 5% of the outstanding securities of that class at the beginning of the 12-month period, and
- (d) the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with section 5.1, plus reasonable brokerage fees or commissions actually paid.

(2) Every issuer making a bid under this section must issue and file, at least 5 days before the commencement of the bid, a news release that identifies

- (a) the class and number of securities or principal amount of debt securities sought,
- (b) the dates, if known, on which the issuer bid will commence and expire,

- (c) the value, in Canadian dollars, of the consideration offered per security,
- (d) the manner in which the securities will be acquired, and
- (e) the reasons for the issuer bid.

(3) An issuer bid that is made in reliance on this section through the facilities of an exchange must be made in accordance with the bylaws, rules, regulations and policies of that exchange.

Exchange issuer bid exemption

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

(2) Every issuer making a bid under this section must promptly file any news release required to be issued by the exchange referred to in subsection (1).

Non-reporting issuer exemption

5.11 An issuer bid is exempt from the requirements of Part 2 if:

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

Foreign issuer bid exemption

5.12 An issuer bid is exempt from the requirements of Part 2 if:

- (a) persons whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid,
- (b) the offeror reasonably believes that Canadian security holders beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid,
- (c) the published market on which the greatest dollar volume of trading in securities of that class occurred during the 12 months immediately preceding the date of the bid was not in Canada,
- (d) security holders in Canada are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders,
- (e) all of the material relating to the bid that is sent by or on behalf of the offeror is concurrently sent to security holders whose last address as shown on the books of the offeree issuer is in Canada and filed, and
- (f) the materials referred to in paragraph (e) are published in its home jurisdiction, the offeror must publish the information in Canada in a manner reasonably calculated to inform Canadian security holders of the bid.

De minimis exemption

5.13 An issuer bid is exempt from the requirements of Part 2 in the local jurisdiction if:

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

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

PART 6 EARLY WARNING

Definition of offeror

6.1 For the purposes of this Part, “**offeror**” means a person who acquires a security, whether or not by way of a take-over bid, issuer bid or other offer to acquire.

Reports of acquisitions

6.2 (1) Every offeror, other than an offeror that has made a bid in compliance with Part 2 of this Instrument, that directly or indirectly acquires control or direction over, or beneficial ownership of

- (a) voting or equity securities of any class of a reporting issuer, or
- (b) securities convertible into voting or equity securities of any class of a reporting issuer,

that, together with the offeror’s securities of that class, would constitute 10% or more of the outstanding securities of that class, must

- (c) promptly issue and file a news release containing the information set out in Appendix E of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*, and
- (d) within 2 business days from the day of the acquisition, file a report containing the same information contained in the news release issued under paragraph (c).

(2) If an offeror that is required to file a report under subsection (1) or a further report under this subsection or any person acting jointly or in concert with the offeror acquires control or direction over, or beneficial ownership of, an additional 2% or more of the outstanding securities of the class of securities that was the subject of a report required to be filed by the offeror under subsection (1), the offeror must issue a news release and file a report in accordance with the requirements of subsection (1).

(3) Any material change in the information contained in the report referred to in subsection (1) or (2) must be the subject of a news release and a report in accordance with the requirements of subsection (1).

(4) During the period beginning on the occurrence of an event in respect of which a report or further report is required to be filed under this section and ending on the expiry of one business day after the date that the report or further report is filed, the offeror required to file the report or any person acting jointly or in concert with the offeror must not acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

(5) Subsection (4) does not apply to an offeror that has control or direction over, or beneficial ownership of, securities that, together with the offeror’s securities of that class, constitute 20% or more of the outstanding securities of that class.

Acquisitions during bid by person other than offeror

6.3 (1) If, after a bid has been made in compliance with Part 2 for voting or equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the offeror making the bid, that acquires control or direction over, or beneficial ownership of, securities of the class subject to the bid which, when added to the offeror’s securities of that class, constitute 5% or more of the outstanding securities of that class, the offeror must, prior to the opening of trading on the next business day, issue and file a news release containing the information required by subsection (3).

(2) If an offeror that is required to file a news release under subsection (1) or a further news release under this subsection or any person acting jointly or in concert with the offeror acquires control or direction over, or beneficial ownership of, securities of the class subject to the bid which, when added to the securities of that class acquired after the filing of the news release by the offeror and any person acting jointly or in concert with the offeror, aggregates an additional 2% or more of the class of

outstanding securities, the offeror must, before the opening of trading on the next business day, issue and file a further news release containing the information required by subsection (3).

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

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

Duplicate reports not required

6.4 If the facts required to be reported or in respect of which a news release is required to be filed under sections 6.2 and 6.3 are identical, a report or news release is required only under the provision requiring the earlier report or news release, as the case may be.

Copies of news release and report

6.5 An offeror that files a news release and report under sections 6.2 and 6.3 must promptly send a copy of the news release or report to the reporting issuer.

PART 7 EXEMPTION

Exemption

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

(2) In Ontario, only the regulator may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption.

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

PART 8 TRANSITION AND COMING INTO FORCE

Transition

8.1 A take-over bid or issuer bid commenced before the coming into force of this Instrument in reliance on the take-over bid and issuer bid provisions in securities legislation at that time may be completed in accordance with those provisions, as applicable.

Coming into force

8.2 This Instrument comes into force on ●.

FORM 62-104F1

TAKE-OVER BID CIRCULAR

Part 1 - General Provisions

(a) Defined Terms

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

(b) Incorporating information by reference

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

(c) Plain Language

Write the take-over bid circular so that readers are able to understand it. Refer to the plain language principles listed in section 2.6 of Companion Policy 62-104CP. If you use technical terms, explain them in a clear and concise manner.

(d) Numbering and Headings

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

Part 2 - Contents of Take-Over Bid Circular

Item 1. Name and Description of Offeror

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

Item 2. Name of Offeree Issuer

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

Item 3. Securities Sought

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

Item 4. Time Period

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

Item 5. Consideration

State the consideration to be offered. If the consideration includes securities, state the full particulars of the terms and conditions attaching to those securities.

Item 6. Ownership of Securities of Offeree Issuer

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

Request for Comments

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

or, in each case where no securities are owned, directed or controlled, provide a statement to that effect.

Item 7. Trading in Securities of Offeree Issuer

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

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

If no such securities were purchased or sold, so state.

Item 8. Commitments to Acquire Securities of Offeree Issuer

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

Item 9. Terms and Conditions of the Bid

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

Item 10. Payment for Deposited Securities

State the particulars of the method and time of payment of the cash or other consideration to be paid.

Item 11. Right to Withdraw Deposited Securities

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

Item 12. Source of Funds

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

- (a) the name of the lender,
- (b) the terms and financing conditions of the loan,
- (c) whether the offeror reasonably believes the possibility to be remote that, if the conditions are satisfied or waived, the offeror will be unable to pay for securities deposited under the take-over bid due to a financing condition not being satisfied,
- (d) the circumstances under which the loan must be repaid, and
- (e) the proposed method of repayment.

Item 13. Trading in Securities to be Acquired

State the principal market or markets for the securities sought under the take-over bid and indicate any change in a principal market that is planned by the offeror following the bid, including but not limited to listing or de-listing on an exchange. Furnish, where reasonably ascertainable, a summary showing in reasonable detail the volume of trading and price range of the securities in the six-month period preceding the date of the take-over bid. State the date that the take-over bid was announced to the public and the market price of the securities immediately before such announcement.

Item 14. Arrangements Between the Offeror and the Directors and Officers of Offeree Issuer

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

Item 15. Arrangements Between the Offeror and Security Holders of Offeree Issuer

Disclose the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeror and a holder of the securities of the offeree issuer, including particulars of any agreement to the effect that the security holder will deposit its securities to a take-over bid made by the offeror. Disclosure with respect to each arrangement, agreement, commitment or understanding must include

- (a) a summary of its purpose,
- (b) the value attributed to it,
- (c) the nature and value of the consideration payable in respect of it, and
- (d) an explanation as to how the offeror determined that entering into it was not prohibited by section 2.22 of the Instrument.

Item 16. Arrangements Between the Offeror and the Offeree Issuer

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

Item 17. Reasons for Bid

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

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

Item 18. Valuation

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

If a valuation is otherwise provided, the offeror must provide a summary of the valuation in sufficient detail to allow the reader to understand the principal judgements and principal underlying reasoning of the valuator so as to be able to form a reasoned judgment of the valuation opinion or conclusion. The summary must

- (a) disclose the basis of computation, scope of review, relevant factors and their values, and the key assumptions on which the valuation is based, and

- (b) advise where copies of the valuation are available for inspection and state that a copy of the valuation will be sent to any security holder of the offeree issuer on request, for a nominal charge sufficient to cover printing and postage.

Item 19. Securities of an Offeror or Other Issuer to be Exchanged for Securities of Offeree Issuer

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

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

Item 20. Right of Appraisal and Acquisition

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

Item 21. Market Purchases of Securities

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

Item 22. Approval of Take-Over Bid Circular

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

Item 23. Other Material Information

State the particulars of any other information known to the offeror not already disclosed that might reasonably affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 24. Solicitations

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

Item 25. Statement of Rights

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

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

Item 26. Certificate

Include a certificate in the following form signed,

- (a) if the take-over bid is made by or on behalf of a person, other than an individual, by the chief executive officer, the chief financial officer (or, if no such officers have been appointed, persons acting in a similar capacity) and on behalf of the directors, by any two directors of the person other than the foregoing, all duly authorized to sign, and
- (b) if the take-over bid is made by or on behalf of an individual, by the individual:

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

Instruction

Where the person has fewer than four directors and officers, the certificate must be signed by all of them.

Item 27. Date of Take-Over Bid Circular

Specify the date of the take-over bid circular.

FORM 62-104F2

ISSUER BID CIRCULAR

Part 1 - General Provisions

(a) Defined Terms

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

(b) Incorporating information by reference

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

(c) Plain Language

Write the issuer bid circular so that readers are able to understand it. Refer to the plain language principles listed in section 2.6 of Companion Policy 62-104CP. If you use technical terms, explain them in a clear and concise manner.

(d) Numbering and Headings

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

Part 2 - Contents of Issuer Bid

Item 1. Name of Offeree Issuer

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

Item 2. Securities Sought

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

If the number of securities sought is subject to additional purchases by the issuer under the issuer bid for the purpose of preventing security holders from being left with odd lot holdings, this fact must be disclosed under this item, but the number of securities that could be purchased for this purpose need not be disclosed.

Item 3. Time Period

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

Item 4. Consideration

State the consideration to be offered. If the consideration includes securities, state the full particulars of the terms and conditions attaching to those securities.

Item 5. Payment for Deposited Securities

State the particulars of the method and time of payment of the cash or other consideration.

Item 6. Right to Withdraw Deposited Securities

Request for Comments

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

Item 7. Source of Funds

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

- (a) the name of the lender,
- (b) the terms and financing conditions of the loan,
- (c) whether the offeror reasonably believes the possibility to be remote that, if the conditions are satisfied or waived, the offeror will be unable to pay for securities deposited under the issuer bid due to a financing condition not being satisfied,
- (d) the circumstances under which the loan must be repaid, and
- (e) the proposed method of repayment.

Item 8. Participation

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

If an issuer intends to rely on the exceptions from the proportionate take-up and payment requirements found in subsections (2) and (3) of section 2.23 of the Instrument relating to odd lots and "dutch auctions", describe the mechanism under which securities would be tendered and taken up without pro ration.

Item 9. Reasons for Bid

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

Item 10. Trading in Securities to be Acquired

Furnish, where reasonably ascertainable, a summary showing

- (a) the name of each principal marketplace on which the securities sought are traded,
- (b) in reasonable detail for the six months preceding the date of the issuer bid, the volume of trading and price range of the class of the securities sought, or in the case of debt securities the prices quoted, on each principal market, and
- (c) the date that the issuer bid to which the circular relates was announced to the public and the market price of the securities of the issuer immediately before such announcement.

Indicate any change in a principal marketplace or marketplaces that is planned following the issuer bid.

Item 11. Ownership of Securities of Issuer

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

- (a) by each director and officer or other insider of the issuer and
- (b) if known after reasonable enquiry, by
 - (i) each associate or affiliate of an insider of the issuer,
 - (ii) every associate or affiliate of the issuer, and

- (iii) any person acting jointly or in concert with the issuer.

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

Item 12. Commitments to Acquire Securities of Issuer

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

Item 13. Acceptance of Issuer Bid

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

Item 14. Benefits from Bid

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

Item 15. Material Changes in the Affairs of Issuer

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

Item 16. Other Benefits

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

Item 17. Arrangements Between Issuer and Security Holder

Provide the details of any arrangement, agreement, commitment or understanding between the issuer and

- (a) any security holder of the issuer, including a summary of its purpose, the value attributed to it, the nature and value of the consideration payable in respect of it and an explanation as to how the issuer determined that entering into it was not prohibited by section 2.22 of the Instrument, and
- (b) any person with respect to any securities of the issuer in relation to the issuer bid.

Item 18. Previous Purchases and Sales

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

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

If no securities were purchased or sold, so state.

Item 19. Financial Statements

If the most recently available interim financial statements are not included, include a statement that the most recent interim financial statements will be sent without charge to any security holder requesting them.

Item 20. Valuation

Include the disclosure required by applicable securities legislation regarding valuations, if any.

If a valuation is otherwise provided, the issuer must provide a summary of the valuation in sufficient detail to allow the reader to understand the principal judgements and principal underlying reasoning of the valuator so as to be able to form a reasoned judgment of the valuation opinion or conclusion. The summary must

- (a) disclose the basis of computation, scope of review, relevant factors and their values, and the key assumptions on which the valuation is based, and
- (b) advise where copies of the valuation are available for inspection and state that a copy of the valuation will be sent to any security holder of the issuer on request, for a nominal charge sufficient to cover printing and postage.

Item 21. Securities of Issuer to be Exchanged for Others

If an issuer bid provides that the consideration for the securities of the issuer is to be, in whole or in part, different securities of the issuer, include the financial and other information prescribed for a prospectus of the issuer.

Item 22. Approval of Issuer Bid Circular

State that the issuer bid circular has been approved by the issuer's directors, disclosing the name of any individual director of the issuer who has informed the directors in writing of his or her opposition to the issuer bid and that the delivery of the issuer bid circular to the security holders of the issuer has been authorized by the issuer's directors.

If the issuer bid is part of a transaction or to be followed by a transaction required to be approved by minority security holders, state the nature of the approval required.

Item 23. Previous Distribution

If the securities of the class subject to the issuer bid were distributed during the five years preceding the issuer bid, state the distribution price per share and the aggregate proceeds received by the issuer or selling security holder.

Item 24. Dividend Policy

State the frequency and amount of dividends with respect to shares of the issuer during the two years preceding the date of the issuer bid, any restrictions on the issuer's ability to pay dividends and any plan or intention to declare a dividend or to alter the dividend policy of the issuer.

Item 25. Tax Consequences

Provide a general description of the Canadian income tax consequences of the issuer bid to the issuer and to the security holders of any class affected.

Item 26. Expenses of Bid

Provide a statement of the expenses incurred or to be incurred in connection with the issuer bid.

Item 27. Right of Appraisal and Acquisition

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

Item 28. Statement of Rights

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

Securities legislation of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such

rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult with a lawyer.

Item 29. Other Material Information

Describe any matter not disclosed in the foregoing that has not previously been generally disclosed and is known to the issuer but which would reasonably be expected to affect the decision of the security holders of the issuer to accept or reject the offer.

Item 30. Solicitations

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

Item 31. Certificate

Include a certificate in the following form signed by the chief executive officer and the chief financial officer (or, if no such officers have been appointed, persons acting in a similar capacity) of the issuer, and on behalf of the directors, by any two directors of the issuer other than the foregoing, all duly authorized to sign.

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

Instruction

If the issuer has fewer than four directors and officers, the certificate must be signed by all of them.

Item 32. Date of Issuer Bid Circular

Specify the date of the issuer bid circular.

FORM 62-104F3

DIRECTORS' CIRCULAR

Part 1 - General Provisions

(a) Defined Terms

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

(b) Plain Language

Write the directors' circular so that readers are able to understand it. Refer to the plain language principles listed in section 2.6 of Companion Policy 62-104CP. If you use technical terms, explain them in a clear and concise manner.

(c) Numbering and Headings

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

Part 2 Contents of Directors' Circular

Item 1. Name of Offeror

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

Item 2. Name of Offeree Issuer

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

Item 3. Names of Directors of the Offeree Issuer

State the name of each director of the offeree issuer.

Item 4. Ownership of Securities of Offeree Issuer

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

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

or, in each case where none are owned, directed or controlled, provide a statement to that effect.

Item 5. Acceptance of Take-Over Bid

If known after reasonable enquiry, state the name of every person named in item 4 who has accepted or intends to accept the offer and the number of securities in respect of which such person has accepted or intends to accept the offer.

Item 6. Ownership of Securities of Offeror

If a take-over bid is made by or on behalf of an offeror that is an issuer, state the number, designation and percentage of outstanding securities of any class of securities of the offeror beneficially owned or over which control or direction is exercised

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

or, in each case where no securities are so owned, directed or controlled, provide a statement to that effect.

Item 7. Relationship Between the Offeror and the Directors and Officers of the Offeree Issuer

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

Item 8. Arrangements Between Offeree Issuer and Officers and Directors

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

Item 9. Interests of Directors and Officers of the Offeree Issuer in Material Transactions With Offeror

State whether any director or officer of the offeree issuer and their associates and, where known to the directors or officers after reasonable inquiry, whether any person who owns more than 10 per cent of any class of equity securities of the offeree issuer for the time being outstanding has any interest in any material transaction to which the offeror is a party, and if so, state particulars of the nature and extent of such interest.

Item 10. Trading by Directors, Officers and Other Insiders

(1) State the number of securities of the offeree issuer traded, the purchase or sale price and the date of each transaction during the six month period preceding the date of the directors' circular by the offeree issuer and each director, officer or other insider of the offeree issuer, and, if known after reasonable enquiry, by

- (a) each associate or affiliate of an insider of the offeree issuer,
- (b) every affiliate or associate of the offeree issuer, and
- (c) any person acting jointly or in concert with the offeree issuer.

(2) Disclose the number and price of securities of the offeree issuer of the class of securities subject to the bid or convertible into securities of that class that have been issued to the directors, officers and other insiders of the offeree issuer during the two-year period preceding the date of the circular.

Item 11. Additional Information

If any information required to be disclosed by the take-over bid circular prepared by the offeror has been presented incorrectly or is misleading, supply any additional information which would make the information in the circular correct or not misleading.

Item 12. Material Changes in the Affairs of Offeree Issuer

State the particulars of any information known to any of the directors or officers of the offeree issuer that indicates any material change in the affairs of the offeree issuer since the date of the last published interim or annual financial statement of the offeree issuer.

Item 13. Other Material Information

State the particulars of any other information known to the directors of the offeree issuer not already disclosed that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer. This would include

- (a) any securityholder or voting trust agreement that the offeree issuer has access to and that can reasonably be regarded as material to an investor in securities of the offeree issuer,
- (b) any securityholders' rights plans or other similar plans,
- (c) any valuation or fairness opinion obtained by the directors of the offeree issuer,
- (d) any plans or proposals for material changes in the affairs of the offeree issuer or a going private or other transaction, or
- (e) any other contract of the offeree issuer or a subsidiary of the offeree issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of its securityholders generally.

Item 14. Recommending Acceptance or Rejection of Bid

Include either a recommendation to accept or reject the take-over bid and the reasons for such recommendation or a statement that the directors are unable to make or are not making a recommendation. If no recommendation is made, state the reasons for not making a recommendation. If the directors of an offeree issuer are considering recommending acceptance or rejection of a take-over bid at the time of sending a directors' circular, state that fact.

Item 15. Response of Offeree Issuer

(1) Describe any transaction, directors' resolution, agreement in principle or signed contract of the offeree issuer in response to the bid.

(2) Disclose whether there are any negotiations underway in response to the bid which relate to or would result in

- (a) an extraordinary transaction such as a merger or reorganization involving the offeree issuer or a subsidiary,
- (b) the purchase, sale or transfer of a material amount of assets by the offeree issuer or a subsidiary,
- (c) a competing take-over bid,
- (d) a bid by the offeree issuer for its own securities or for those of another issuer, or
- (e) any material change in the present capitalization or dividend policy of the offeree issuer.

If there is an agreement in principle, give full particulars.

Item 16. Approval of Directors' Circular

State that the directors' circular has been approved by the directors of the offeree issuer and that the delivery of the directors' circular has been authorized by the directors of the offeree issuer.

Item 17. Statement of Rights

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

Securities legislation in the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However,

such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult with a lawyer.

Item 18. Certificate

Include a certificate in the following form signed by two directors of the issuer, duly authorized to sign on behalf of the directors.

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

Item 19. Date of Directors' Circular

Specify the date of the directors' circular.

FORM 62-104F4

DIRECTOR'S OR OFFICER'S CIRCULAR

Part 1 - General Provisions

(a) Defined Terms

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

(b) Plain Language

Write the director's or officer's circular so that readers are able to understand it. Refer to the plain language principles listed in section 2.6 of Companion Policy 62-104CP. If you use technical terms, explain them in a clear and concise manner.

(c) Numbering and Headings

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

Part 2 - Contents of Director's or Officer's Circular

Item 1. Name of Offeror

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

Item 2. Name of Offeree Issuer

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

Item 3. Name of Director or Officer of Offeree Issuer

State the name of each director or officer delivering the circular.

Item 4. Ownership of Securities of Offeree Issuer

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

- (a) by the director or officer, and
- (b) if known after reasonable enquiry, by the associates of the director or officer

or, in each case where no securities are so owned, directed or controlled, provide a statement to that effect.

Item 5. Acceptance of Bid

State whether the director or officer of the offeree issuer and whether any associate of such director or officer whose acceptance is known to the director or officer, after reasonable inquiry, has accepted or intends to accept the offer and state the number of the securities in respect of which the director or officer, or where known after reasonable enquiry, any associate, has accepted or intends to accept the offer.

Item 6. Securities of Offeror Owned by Director or Officer

If a take-over bid is made by or on behalf of an issuer, state the number, designation and percentage of outstanding securities of any class of securities of the offeror beneficially owned or over which control or direction is exercised by the director or officer, or, where known after reasonable enquiry, by the associates of such director or officer.

Item 7. Arrangements between Offeror and Director or Officer

Disclose the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeror and the director or officer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to the director's or officer's remaining in or retiring from office if the take-over bid is successful. State whether the director or officer is also a director or officer of the offeror or any subsidiary of the offeror.

Item 8. Arrangements between Offeree Issuer and Director or Officer

Disclose the particulars of any arrangement, arrangement, commitment or understanding made or proposed to be made between the offeree issuer and the director or officer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to his or her remaining in or retiring from office if the take-over bid is successful.

Item 9. Interests of Director or Officer in Material Transactions With Offeror

State whether the director or officer or the associates of the director or officer have any interest in any material transaction to which the offeror is a party, and if so, state particulars of the nature and extent of such interest.

Item 10. Additional Information

If any information required to be disclosed by the take-over bid circular prepared by the offeror has been presented incorrectly or is misleading, supply any additional information within the knowledge of the director or officer which would make the information in the circular correct or not misleading.

Item 11. Material Changes in the Affairs of Offeree Issuer

State the particulars of any information known to the director or officer that indicates any material change in the affairs of the offeree issuer since the date of the last published interim or annual financial statement of the offeree issuer and not generally disclosed or in the opinion of the director or officer not adequately disclosed in the take-over bid circular or directors' circular.

Item 12. Other Information

State the particulars of any other information known to the director or officer not already disclosed that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 13. Recommendation

State the recommendation of the director or officer and the reasons for the recommendation.

Item 14. Statement of Rights

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

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

Item 15. Certificate

Include a certificate in the following form signed by or on behalf of each director or officer delivering the circular.

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

Item 16. Date of Director's or Officer's Circular

Specify the date of the director's or officer's circular.

FORM 62-104F5

NOTICE OF CHANGE OR NOTICE OF VARIATION

Part 1 - General Provisions

(a) Defined Terms

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

(b) Plain Language

Write the notice of change or notice of variation so that readers are able to understand it. Refer to the plain language principles listed in section 2.6 of Companion Policy 62-104CP. If you use technical terms, explain them in a clear and concise manner.

(c) Numbering and Headings

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

Part 2 - Contents of Notice of Change or Notice of Variation

Item 1. Name of Offeror

Item 2. Name of Offeree Issuer (if applicable)

Item 3. Particulars of Notice of Change or Variation

(1) A notice of change required under section 2.9 of the Instrument must contain

- (a) a description of the change in the information contained in
 - (i) the take-over bid circular,
 - (ii) the issuer bid circular, and
 - (iii) any notice of change previously delivered under section 2.9,
- (b) the date of the change,
- (c) the date up to which securities may be deposited,
- (d) the date by which securities deposited must be taken up by the offeror, and
- (e) a description of the rights of withdrawal that are available to security holders.

(3) A notice of variation required under section 2.10 of the Instrument must contain

- (a) a description of the variation in the terms of the take-over bid or issuer bid,
- (b) the date of the variation,
- (c) the date up to which securities may be deposited,
- (d) the date by which securities deposited must be taken up by the offeror,
- (e) if the date referred to in paragraph (d) is not known, a description of the legal requirements regarding the timing of take-up of securities deposited under the bid,

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- (f) a description of when payment will be made for deposited securities in relation to the time in which they are taken up by the offeror, and
- (g) a description of the rights of withdrawal that are available to security holders.

(4) A notice of change required under section 2.16 or subsection 2.18(2) of the Instrument must contain, as applicable, a description of the change in the information contained in

- (a) the directors' circular,
- (b) any notice of change previously delivered under section 2.16,
- (c) the director's or officer's circular, or
- (d) any notice of change previously delivered under subsection 2.18(2).

Item 4. Statement of Rights

Include the following statement of rights provided under the securities legislation of the jurisdiction relating to this notice:

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

Item 5. Certificate

Include the signed certificate required in the bid circular, directors' circular or director's or officer's circular, amended to refer to the initial circular and to all subsequent notices of change or notices of variation.

Item 6. Date of Notice of Change or Notice of Variation

Specify the date of the notice of change or notice of variation.

COMPANION POLICY 62-104CP

TAKE-OVER BIDS AND ISSUER BIDS

PART 1: INTRODUCTION AND PURPOSE

1.1 Application – National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) consolidates and harmonizes requirements governing the conduct of take-over bids and issuer bids in Canada. The Instrument has been implemented in all jurisdictions as a rule or regulation.

1.2 Purpose – The purpose of this companion policy is to help you understand how the provincial and territorial regulatory authorities interpret or apply certain provisions of the Instrument and to provide guidance on the conduct of parties involved in a bid.

PART 2: BID REGIME

2.1 General – The Instrument is designed to establish a clear and predictable framework for the conduct of bids in a manner that achieves three primary objectives:

- equal treatment of offeree issuer security holders,
- provision of adequate information to offeree issuer security holders,
- an open and even-handed bid process that does not unfairly discriminate among, or exert pressure on, offeree issuer security holders.

Those involved in a take-over bid or issuer bid are encouraged to conduct themselves in a manner consistent with these objectives.

2.2 Identifying the Offeror – More than one person may constitute an offeror under a take-over bid. This can arise if an offer is made indirectly, because the terms *offer to acquire* and *take-over bid* include direct and indirect offers to acquire securities.

For example, a party (the primary party) that uses an acquisition entity, subsidiary or other affiliate (the named offeror) to make a take-over bid, may itself be making an indirect bid. In that case, the named offeror and the primary party may be joint offerors. Both would be subject to the bid requirements of the Instrument, including the requirements to certify and deliver the bid circular.

If a take-over bid is made by a wholly-owned entity, we regard the entity's parent to be a joint offeror. If the named offeror is not a wholly-owned entity, assessment of whether the primary party is a joint offeror would depend on its role, taking into account, among other factors, the answers to the following questions:

- 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, in our view, mean that the primary party is making an indirect offer, and is a joint offeror under the bid.

2.3 Collateral agreements – Subsection 2.22(2) of the Instrument prohibits an offeror from entering into a collateral agreement, understanding or commitment that has the effect of providing a security holder of the offeree issuer with greater consideration than that offered to other security holders of the same class. This prohibition against collateral agreements extends to any direct or indirect benefit being provided by the offeror to the holder.

If a party is able to demonstrate that a particular agreement, understanding or arrangement is undertaken for a valid business purpose and that the terms of the agreement, understanding or arrangement provide for a mutual exchange of consideration of equivalent value, the securities regulatory authority or regulator will consider granting an exemption from the collateral benefit prohibition under section 7.1 of the Instrument.

Subsection 2.22(3) of the Instrument excludes certain employment-related arrangements from the scope of the collateral agreement prohibition in subsection 2.22(2) if an independent committee, acting in good faith, determines that the value of the consideration, net of any offsetting costs to the security holder, is less than five per cent of the value the security holder expects it will be beneficially entitled to receive under the terms of the bid in exchange for the equity securities beneficially owned by the security holder. For this purpose, we consider an independent committee to mean a committee composed exclusively of directors who are disinterested in the bid or any related transactions.

2.4 Lockup and support agreements – Documents required to be filed under section 3.2 of the Instrument that have been previously filed (for example under NI 44-101 or National Instrument 51-102 *Continuous Disclosure Obligations*) should not be refiled. Instead, the offeror should file a letter with the regulator describing the previously filed documents and the filing date and SEDAR project number.

2.5 Valuations – Issuer bids and insider bids may be subject to valuation requirements under the securities legislation of certain jurisdictions. Offerors whose securities are listed on the TSX Venture Exchange may also be subject to exchange valuation requirements. In these circumstances, offerors and offeree issuers are reminded to consider whether the valuation requirements contained in local rules or regulations such as OSC Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* or Quebec Regulation Q-27 *respecting Protection of Minority Securityholders in the Course of Certain Transactions*, or in TSX Venture Policy 5.9 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* apply.

2.6 Plain language principles – Plain language will help investors understand your disclosure so that they can make informed investment decisions:

- use short sentences
- use the active voice
- use personal pronouns to speak directly to the reader
- avoid superfluous words
- organize the document in clear, concise sections, paragraphs and sentences
- avoid jargon
- avoid reliance on glossaries and defined terms unless it facilitates understanding of the discipline
- avoid boilerplate wording
- avoid multiple negatives
- use technical terms only when necessary and explaining them
- use charts, tables, and examples to make disclosure easier to understand.

2.7 Determination of shareholdings – For the purposes of sections 5.5, 5.6, 5.12 and 5.13 of the Instrument, in determining the outstanding voting securities that are owned, directly or indirectly, by residents of Canada, an offeror should

- (a) use reasonable efforts to identify securities held by registrants, financial institutions or nominees for the accounts of customers resident in Canada;
- (b) count securities beneficially owned by residents of Canada as disclosed in insider reports and early warning reports; and
- (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

Lists of beneficial owners of securities maintained by intermediaries under SEC Rule 14a-13 under the 1934 Act or other securities laws analogous to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* may also be helpful.

2.8 Equal Treatment – The failure to make a bid to security holders of an offeree issuer in one or more jurisdictions if the bid is made to security holders in other jurisdictions is inconsistent with the equal treatment requirement in section 2.6 of the Instrument because of the prejudice to the interests of security holders in the excluded jurisdictions. Offerors are reminded that securities regulatory authorities in the jurisdictions in which the bid is made may issue cease trade orders in respect of the bid.

2.9 Odd Lots – For purposes of subsection 2.23(2) of the Instrument, an offeror should refer to the definition of *board lot* as that term is defined in section 1-101 of The Rules of The Toronto Stock Exchange or TSX Venture Policy 1.1 to determine what constitutes an odd lot as an odd lot consists of security holdings of less than a board lot.

2.10 Early Warning – Persons acquiring securities of a reporting issuer may trigger the obligation to issue and file a news release and file a report under sections 6.2 and 6.3 of the Instrument by acquiring ownership through market purchases or through the issuance of treasury securities under an exempt offering.