

## Chapter 9

# Legislation

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### 9.1.1 Bill 187, Budget Measures and Interim Appropriation Act, 2007

#### BILL 187, BUDGET MEASURES AND INTERIM APPROPRIATION ACT, 2007

##### Explanatory Note

Schedule 38  
Securities Act

Technical amendments are made to Part XV of the *Securities Act*, which governs prospectuses and distributions. A related amendment is made to section 143 of the Act. Highlights of the technical amendments include the following:

1. Amendments to section 57 of the Act provide that an issuer cannot proceed with a distribution or an additional distribution of securities pursuant to an amendment to a prospectus unless the Director has issued a receipt for the amendment. Exceptions may be made by regulation.

2. An amendment to the definition of “waiting period” in subsection 65 (1) of the Act, which establishes the minimum period between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus, permits the waiting period to be prescribed by regulation.

Technical amendments are made to expressions used in the French version of sections 35 and 72 of the Act.

Part XX of the Act, which governs take-over bids and issuer bids, is re-enacted. The current requirements are reorganized, and technical amendments are made. Related amendments are made to sections 1, 131, 133, 138.1, 138.5 and 143 of the Act. Highlights of the technical amendments include the following:

1. The definitions of “take-over bid” and “issuer bid”, which are set out in subsection 89 (1) of the Act, are amended to exclude purchases that are a step in a transaction that requires the approval of security holders. The definition of “issuer bid” is also amended to exclude purchases where no valuable consideration is paid for the securities.

2. Section 91 of the Act re-enacts the provision governing the circumstances in which a person or company will be treated as acting jointly or in concert with an offeror. The technical amendments reduce the burden of proof in certain circumstances where it is alleged that an offeror has acted jointly or in concert with another person or company.

3. Section 97 of the Act re-enacts the current requirement that all holders of the same class of securities must be offered identical consideration, if a formal bid is made. The new subsection 97 (2) states that this requirement does not prohibit an offeror from offering an identical choice of consideration to those security holders.

4. Section 97.1 of the Act re-enacts the current prohibition against entering into a collateral agreement, commitment or understanding that has the effect of providing to one security holder consideration of greater value than the consideration offered to other holders of the same class of securities. An amendment creates an exception for certain employment-related arrangements.

5. Current exemptions from the formal bid requirements are re-enacted. Sections 100.3 and 101.4 create new exemptions for take-over bids and issuer bids that are carried out in accordance with the laws of a foreign jurisdiction, if more than 90 per cent of the securities that are subject to the bid are held outside Canada.

Technical amendments are also made to section 143.10 of the Act which governs certain agreements, memorandums of understanding and arrangements entered into by the Commission. The amendments concern those that the Commission is not required to publish in its Bulletin. The amendments provide for their review by the Minister and for the date on which they come into effect.

**SCHEDULE 38  
SECURITIES ACT**

**1. (1) Clause (a) of the definition of “associate” in subsection 1 (1) of the *Securities Act* is repealed and the following substituted:**

- (a) except in Part XX, any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
- (a.1) in Part XX, any issuer of which such person or company beneficially owns or controls, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the issuer for the time being outstanding,

**(2) Subsection 1 (1.1) of the Act is amended by adding ““consultant”” after ““business combination””.**

**(3) Subsection 1 (2) of the Act is amended by adding at the beginning “Except for the purposes of Part XX”.**

**(4) Subsection 1 (3) of the Act is amended by adding at the beginning “Except for the purposes of Part XX”.**

**(5) Subsection 1 (4) of the Act is amended by adding at the beginning “Except for the purposes of Part XX”.**

**2. The French version of subparagraph 3 iii.2 of subsection 35 (1) of the Act is repealed and the following substituted:**

- iii.2 un courtier inscrit dans la catégorie de courtier en bourse, de courtier en valeurs mobilières ou de courtier négociant,

**3. (1) Subsection 57 (1) of the Act is amended by striking out “Subject to subsection (2)” at the beginning.**

**(2) Subsection 57 (2) of the Act is repealed and the following substituted:**

**Same, additional securities**

(2) If, after a receipt for a prospectus or for an amendment to a prospectus is issued but before the distribution under the prospectus or amendment is completed, securities in addition to those previously disclosed in the prospectus or amendment are to be distributed, the issuer making the distribution shall file an amendment to the prospectus disclosing the additional securities as soon as practicable and, in any event, within 10 days after the decision to increase the number of securities offered is made.

**Receipt**

(2.1) The Director shall issue a receipt for an amendment to a prospectus that must be filed under subsection (1) or (2) unless the Director refuses in accordance with subsection 61 (2) to issue the receipt.

**Restriction**

(2.2) Unless otherwise permitted by regulation, an issuer shall not proceed with a distribution or an additional distribution until a receipt is issued for an amendment to the prospectus that must be filed under subsection (1) or (2).

**4. (1) Subsection 58 (1) of the Act is amended,**

- (a) **by striking out “a certificate in the following form” and substituting “a certificate in the prescribed form”;** and
- (b) **by striking out “*The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XV of the Securities Act and the regulations thereunder*” at the end.**

**(2) Subsection 58 (2) of the Act is amended,**

- (a) by striking out “a certificate in the following form” and substituting “a certificate in the prescribed form”; and
- (b) by striking out “*The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XV of the Securities Act and the regulations thereunder*” at the end.

5. Subsection 59 (1) of the Act is amended,

- (a) by striking out “a certificate in the following form” and substituting “a certificate in the prescribed form”; and
- (b) by striking out “*To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part XV of the Securities Act and the regulations thereunder*” at the end.

6. The definition of “waiting period” in subsection 65 (1) of the Act is repealed and the following substituted:

“waiting period” means the period prescribed by regulation or, if no period is prescribed, the period between the Director’s issuance of a receipt for a preliminary prospectus relating to the offering of a security and the Director’s issuance of a receipt for the prospectus.

7. The French version of subclause 72 (1) (a) (iii.2) of the Act is repealed and the following substituted:

- (iii.2) un courtier inscrit dans la catégorie de courtier en bourse, de courtier en valeurs mobilières ou de courtier négociant;

8. Part XX of the Act is repealed and the following substituted:

**PART XX  
TAKE-OVER BIDS AND ISSUER BIDS**

INTERPRETATION

**Definitions**

89. (1) In this Part,

“bid circular” means a bid circular prepared in accordance with section 94.2; (“circulaire d’offre”)

“business day” means a day other than a Saturday or holiday; (“jour ouvrable”)

“class of securities” includes a series of a class of securities; (“catégorie de valeurs mobilières”)

“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; (“titre de participation”)

“formal bid” means a formal take-over bid or a formal issuer bid; (“offre formelle”)

“formal bid requirements” means sections 93 to 99.1; (“exigences relatives aux offres formelles”)

“formal issuer bid” means an issuer bid that is not exempt from the formal bid requirements by sections 101 to 101.7; (“offre formelle de l’émetteur”)

“formal take-over bid” means a take-over bid that is not exempt from the formal bid requirements by sections 100 to 100.6; (“offre formelle d’achat visant à la mainmise”)

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

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

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

“offeror” means, except in sections 93 to 93.4, a person or company that makes a take-over bid, an issuer bid or an offer to acquire; (“pollicitant”)

“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 by any person or company acting jointly or in concert with the offeror; (“valeurs mobilières du pollicitant”)

“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; (“offre d’acquisition”)

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

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

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

“take-over bid” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons or companies, any of whom is in Ontario or whose last address as shown on the books of the offeree issuer is in Ontario, 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 but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders. (“offre d’achat visant à la mainmise”)

#### **Deemed affiliate of an issuer**

(2) For the purposes of this Part, an issuer shall be deemed to be an affiliate of another issuer if one of them is the subsidiary of the other or if each of them is controlled by the same person or company.

#### **Control**

- (3) For the purposes of this Part, a person or company controls a second person or company,
  - (a) if the first person or company, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person or company carrying votes which, if exercised, would entitle the first person or company to elect a majority of the directors of the second person or company, unless the first person or company holds the voting securities only to secure an obligation;
  - (b) if the second person or company is a partnership, other than a limited partnership, and the first person or company holds more than 50 per cent of the interests of the partnership; or

- (c) if the second person or company is a limited partnership and the general partner of the limited partnership is the first person or company.

#### **Computation of time**

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

#### **Deemed convertible securities**

- (5) For the purposes of this Part,
  - (a) a security shall be 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 shall be 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**

**90.** (1) For the purposes of this Part, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror or the person or company shall be deemed to have acquired and to be the beneficial owner of a security, including an unissued security, if the offeror or the person or company is the beneficial owner of a security convertible into the security within 60 days following that date or has a right or obligation permitting or requiring the offeror or the person or company, whether or not on conditions, to acquire beneficial ownership of the security within 60 days, by a single transaction or a series of linked transactions.

#### **Calculation of outstanding securities**

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

#### **Calculation of holdings, joint offerors**

(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 the offer or offers to acquire shall be deemed to be securities subject to the offer to acquire of each offeror for the purpose of determining whether an offeror is making a take-over bid.

#### **Limitation**

(4) For the purposes of this section, an offeror is not a beneficial owner of securities solely because there is an agreement, commitment or understanding that a security holder will tender the securities under a formal bid made by the offeror.

#### **Acting jointly or in concert**

**91.** (1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing,

- (a) the following shall be deemed to be acting jointly or in concert with an offeror:
  - (i) a person or company who, as a result of any agreement, commitment or understanding with the offeror or with any other 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, and
  - (ii) an affiliate of the offeror; and

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

**Exception, registered dealers**

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

**Exception, agreements to tender securities**

(3) For the purposes of this section, a person or company is not acting jointly or in concert with an offeror solely because there is an agreement, commitment or understanding that the person or company will tender securities under a formal bid made by the offeror.

**Application to direct and indirect offers**

92. For the purposes of this Part, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities includes a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

BID INTEGRATION RULES FOR FORMAL BIDS

**Definition, offeror**

93. In sections 93.1 to 93.4,

“offeror” means,

- (a) a person or company making a formal bid,
- (b) a person or company acting jointly or in concert with a person or company referred to in clause (a),
- (c) a control person of a person or company referred to in clause (a), or
- (d) a person or company acting jointly or in concert with the control person referred to in clause (c).

**Restrictions on acquisitions during formal take-over bid**

93.1 (1) An offeror shall 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 formal take-over bid or securities convertible into securities of that class otherwise than under the bid on and from the day of the announcement of the offeror’s intention to make the bid until the expiry of the bid.

**Exception**

(2) Subsection (1) does not apply to an offeror’s acquisitions of beneficial ownership of five per cent or less, in the aggregate, of the outstanding securities of the class that is subject to the bid if the acquisitions satisfy such conditions as may be specified by regulation.

**Same**

(3) For the purposes of subsection (2), the acquisition of beneficial ownership of securities that are convertible into securities of the class that is subject to the bid shall be deemed to be an acquisition of the securities as converted.

**Restrictions on acquisitions during formal issuer bid**

(4) An offeror shall 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 formal issuer bid, or securities that are convertible into securities of that class, otherwise than under the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

**Exceptions by regulation**

(5) Subsections (1) and (4) do not apply in such other circumstances as may be specified by regulation.

**Restrictions on acquisitions before formal take-over bid**

**93.2** (1) If, within the period of 90 days immediately preceding a formal 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 shall offer,
  - (i) consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any such prior transaction, or
  - (ii) at least the cash equivalent of that consideration; and
- (b) the offeror shall offer to acquire under the bid that percentage of the securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in any such prior transaction was of the total number of securities of that class beneficially owned by that seller at the time of that prior transaction.

**Exception**

(2) Subsection (1) does not apply to trades effected in the normal course on a published market if the trades satisfy such conditions as may be specified by regulation.

**Same**

(3) Subsection (1) does not apply in such other circumstances as may be specified by regulation.

**Restrictions on acquisitions after formal bid**

**93.3** (1) During the period beginning with the expiry of a formal 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 shall not acquire or offer to acquire beneficial ownership of securities of the class that was subject to the bid except by way of a transaction that is generally available to holders of that class of securities on identical terms.

**Exception**

(2) Subsection (1) does not apply to trades effected in the normal course on a published market if the trades satisfy such conditions as may be specified by regulation.

**Same**

(3) Subsection (1) does not apply in such other circumstances as may be specified by regulation.

### **Prohibition on sales during formal bid**

**93.4** (1) An offeror, except pursuant to the formal bid, shall not sell, or make or enter into an agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, beginning on the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

### **Exception**

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

### **Same**

(3) Subsection (1) does not apply in such other circumstances as may be specified by regulation.

## **MAKING A FORMAL BID**

### **Duty to make bid to all security holders**

**94.** An offeror shall make a formal bid to all holders of the class of securities subject to the bid who are in Ontario by sending the bid,

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

### **Commencement of formal bid**

#### **Take-over bid**

**94.1** (1) An offeror shall commence a formal take-over bid,

- (a) by publishing an advertisement containing a brief summary of the bid in at least one major daily newspaper of general and regular paid circulation in Ontario; or
- (b) by sending the bid to the security holders described in section 94.

#### **Issuer bid**

(2) An offeror shall commence a formal issuer bid by sending the bid to the security holders described in section 94.

### **Duty to prepare and send offeror's circular**

**94.2** (1) An offeror making a formal bid shall prepare a take-over bid circular or an issuer bid circular, as the case may be, containing the information required by the regulations and in the form required by the regulations and shall send the bid circular either as part of the bid or together with the bid.

### **Formal take-over bid commenced by advertising**

(2) An offeror commencing a formal take-over bid by means of an advertisement under clause 94.1 (1) (a) shall,

- (a) on or before the date of first publication of the advertisement, deliver the bid and the bid circular to the offeree issuer's principal office and file the bid, the bid circular 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 described in section 94; and

- (c) not later than two business days after receipt of the list of security holders referred to in clause (b), send the bid and the bid circular to those security holders.

#### **Filing and delivery of take-over bid circular**

(3) An offeror commencing a take-over bid under clause 94.1 (1) (b) shall file the bid and the bid circular and deliver them to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that.

#### **Filing of issuer bid circular**

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

#### **Change in information**

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

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

#### **Exception**

(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.

#### **Variation not a change**

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

#### **Form and contents of notice**

(4) A notice of change in relation to a bid circular shall contain the information required by the regulations and be in the form required by the regulations.

#### **Variation of terms**

**94.4** (1) If there is a variation in the terms of a formal 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 shall promptly issue and file a news release and send a notice of variation to every person or company to whom the bid was required to be sent and whose securities were not taken up before the date of the variation.

#### **Form and contents of notice**

(2) A notice of variation in relation to a formal bid shall contain the information required by the regulations and be in the form required by the regulations.

#### **Expiry of bid after variation**

(3) If there is a variation in the terms of a formal bid, the period during which securities may be deposited under the bid shall not expire before 10 days after the date of the notice of variation.

#### **Exception**

(4) Subsections (1) and (3) do not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid resulting from the waiver where the consideration offered for the

securities consists solely of cash, but in that case the offeror shall promptly issue and file a news release announcing the waiver.

#### **No variation after deposit period**

(5) A variation in the terms of a formal 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, shall 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.

#### **Filing and sending notice of change or variation**

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

#### **Change or variation in advertised take-over bid**

**94.6** (1) If a change or variation occurs to a formal take-over bid that was commenced by means of an advertisement and if the offeror has complied with clauses 94.2 (2) (a) and (b) but has not yet sent the bid and the bid circular as required by clause 94.2 (2) (c), the offeror shall,

- (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 Ontario;
- (b) concurrently with the date of first publication of the advertisement,
  - (i) file the advertisement, and
  - (ii) file and deliver a notice of change or notice of variation to the offeree issuer's principal office; and
- (c) subsequently send the bid, the bid circular and the notice of change or notice of variation to the security holders of the offeree issuer before the expiration of the period set out in clause 94.2 (2) (c).

#### **Exemption from s. 94.5**

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or notice of variation is not required to be filed and sent under section 94.5.

#### **Consent of expert, bid circular**

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

#### **Definition**

(2) For the purposes of this section,

"expert" includes a notary in Quebec, a solicitor, an auditor, an accountant, an engineer, a geologist, an appraiser or any other person or company whose profession or business gives authority to a statement made in a professional capacity by that person or company.

#### **Delivery and date of bid documents**

**94.8** (1) A formal bid, a bid circular and every notice of change or notice of variation shall be mailed by pre-paid mail to the intended recipient or delivered to the intended recipient by personal delivery, courier or other manner acceptable to the Director.

**Same**

(2) Except for a take-over bid commenced by means of an advertisement under clause 94.1 (1) (a), a bid, bid circular, notice of change or notice of variation sent in accordance with subsection (1) shall be deemed to be dated as of the date it was sent to all or substantially all of the persons and companies entitled to receive it.

**Same**

(3) If a take-over bid is commenced by means of an advertisement under clause 94.1 (1) (a), the bid, bid circular, notice of change or notice of variation shall be deemed to have been dated as of the date of first publication of the relevant advertisement.

OFFEREE ISSUER'S OBLIGATIONS

**Duty to prepare and send directors' circular**

**95.** (1) If a formal take-over bid has been made, the board of directors of the offeree issuer shall prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person or company to whom the bid was required to be sent.

**Duty to evaluate and advise**

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

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

**Further communication**

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

**Form and contents of circular**

(4) A directors' circular shall contain the information required by the regulations and be in the form required by the regulations.

**Notice of change**

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

**Form and contents of notice**

(2) A notice of change in relation to a directors' circular shall contain the information required by the regulations and be in the form required by the regulations.

### **Filing directors' circular or notice of change**

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

### **Individual director's or officer's circular**

**96.** (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 or company to whom the take-over bid was required to be sent.

### **Notice of change**

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

### **Form and contents of circular**

(3) A director's or officer's circular shall contain the information required by the regulations and be in the form required by the regulations.

### **Delivery to offeree issuer**

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

### **Circulation of documents**

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

### **Filing**

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

### **Form and contents of notice**

(7) A notice of change in relation to a director's or officer's circular shall contain the information required by the regulations and be in the form required by the regulations.

### **Consent of expert, directors' circular, etc.**

**96.1** If a report, valuation, statement or opinion of an expert, as defined in subsection 94.7 (2), is included in or accompanies a directors' circular, an individual director's or officer's circular or a notice of change, the written consent of the expert to the use of the report, valuation, statement or opinion shall be filed concurrently with the circular or notice.

### **Methods of delivery of offeree issuer's documents**

**96.2** (1) A directors' circular, an individual director's or officer's circular and every notice of change shall be mailed by pre-paid mail to the intended recipient or delivered to the intended recipient by personal delivery, courier or other manner acceptable to the Director.

**Date of documents**

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

OFFEROR'S OBLIGATIONS

**Consideration**

97. (1) If a formal bid is made, all holders of the same class of securities shall be offered identical consideration.

**Same**

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

**Increase in consideration**

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

**Prohibition against collateral agreements**

97.1 (1) If a person or company makes or intends to make a formal bid, the person or company or any person or company acting jointly or in concert with that person or company shall not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.

**Exception, employment benefit arrangements**

(2) Subsection (1) does not apply to such employment compensation arrangements, severance arrangements or other employment benefit arrangements as may be specified by regulation.

**Proportionate take up and payment**

97.2 (1) If a formal 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 shall take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

**Deemed deposit, pre-bid transactions**

(2) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 93.2 (1) applies shall be deemed to have been deposited under the bid by the person or company who was the seller in the pre-bid transaction.

**Exceptions**

(3) Subsection (1) does not apply in such circumstances as may be specified by regulation.

**Financing arrangements**

97.3 (1) If a formal bid provides that the consideration for the securities deposited under the bid is to be paid in cash or partly in cash, the offeror shall 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.

### **Conditional financing arrangements**

(2) The financing arrangements required to be made under subsection (1) 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.

### **BID MECHANICS**

#### **Minimum deposit period**

**98.** (1) An offeror shall allow securities to be deposited under a formal bid for at least 35 days from the date of the bid.

#### **Prohibition on take up**

(2) An offeror shall not take up securities deposited under a formal bid until the expiration of 35 days from the date of the bid.

#### **Withdrawal of securities**

**98.1** (1) A security holder may withdraw securities deposited under a formal 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 94.3 or a notice of variation under section 94.4; or
- (c) if the securities have not been paid for by the offeror within three business days after the securities have been taken up.

#### **Exceptions**

(2) The right of withdrawal under clause (1) (b) does not apply if the securities have been taken up by the offeror before the date of the notice of change or notice of variation or if one or both of the following circumstances occur:

- 1. A variation in the terms of the bid consisting only of an increase in consideration offered for the securities and an extension of the time for deposit to not later than 10 days after the date of the notice of variation.
- 2. A variation in the terms of the bid consisting solely of the waiver of one or more of the conditions of the bid where the consideration offered for the securities subject to the bid consists solely of cash.

#### **Method of withdrawing**

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

#### **Duty to return securities**

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

#### **Effect of market purchases**

**98.2** If an offeror purchases securities under an exemption to subsection 93.1 (1), those purchased securities shall be counted in determining whether a condition as to the minimum number of securities to be deposited under a bid has been fulfilled, but shall not reduce the number of securities the offeror is bound to take up under the bid.

### **Obligation to take up and pay for deposited securities**

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

#### **Same**

(2) An offeror shall pay for any securities taken up under a formal bid as soon as possible, and in any event not later than three business days after the securities deposited under the bid are taken up.

#### **Same**

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

### **Bid not to be extended**

(4) An offeror may not extend its formal 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.

### **Maximum number of securities required to be taken up**

(5) Despite subsections (3) and (4), if a formal 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 97 or 97.2 at the expiry of the bid.

### **Effect of waiver of terms or conditions**

(6) Despite subsection (4), if the offeror waives any terms or conditions of a formal bid and extends the bid in circumstances where the rights of withdrawal conferred by clause 98.1 (1) (b) are applicable, the bid shall be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

### **Expiry of the bid**

**98.4** A formal bid expires at the later of,

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

### **Return of deposited securities**

**98.5** If, following the expiry of a bid, an offeror knows that it will not take up securities deposited under the bid, the offeror shall promptly issue and file a news release to that effect and return the securities to the security holders.

### **News release on expiry of bid**

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

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

### **Filing of documents**

**98.7** An offeror making a formal bid, and an offeree issuer whose securities are the subject of a formal bid, shall file copies of the documents required by the regulations and any amendments to those documents, in accordance with the regulations, unless the documents and amendments have been previously filed.

### **Certification of bid circulars**

**99.** (1) A bid circular, or a notice of change or notice of variation in respect of the bid circular required under this Part shall contain a certificate of the offeror in the form required by the regulations and the certificate must be signed,

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

### **Same, fewer than four directors**

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

### **Same, directors' circulars**

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

### **Same, individual director's or officer's circular**

(4) Every person who 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 Part shall ensure that the circular or notice contains a certificate in the form required by the regulations and the certificate must be signed by or on behalf of the director or officer sending the circular or notice.

### **Substitute signatories**

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

### **Obligation to provide security holder list**

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

### **Access to corporate records**

(2) For the purposes of subsection (1), section 21 of the *Canada Business Corporations Act* applies with necessary modifications to the person or company making or proposing to make the take-over bid and to the issuer,

except that the affidavit that accompanies the request for the list of security holders shall state that the list will not be used except in connection with a formal take-over bid for securities of the issuer.

#### EXEMPT TAKE-OVER BIDS

##### Normal course purchase exemption

**100.** A take-over bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. The bid is for not more than 5 per cent of the outstanding securities of a class of securities of the offeree issuer.
2. The aggregate number of securities acquired in reliance on this exemption by the offeror and any person or company 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 or company acting jointly or in concert with the offeror within the same 12-month period, other than under a formal bid, does not exceed 5 per cent of the outstanding securities of that class at the beginning of the 12-month period.
3. There is a published market for the class of securities that are the subject of the bid.
4. 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 the regulations, plus reasonable brokerage fees or commissions actually paid.

##### Private agreement exemption

**100.1 (1)** A take-over bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. Purchases are made from not more than five persons or companies in the aggregate, including persons or companies located outside of Ontario.
2. The bid is not made generally to security holders of the class of securities that is the subject of the bid, so long as there are more than five security holders of the class.
3. If there is a published market for the securities acquired, the value of the consideration paid for any of the securities, including brokerage fees or commissions, is not greater than 115 per cent of the market price of the securities at the date of the bid as determined in accordance with the regulations.
4. If there is no published market for the securities acquired, there is a reasonable basis for determining that the value of the consideration paid for any of the securities is not greater than 115 per cent of the value of the securities.

##### Determination of number of security holders

(2) For the purposes of subsection (1), if an offeror makes an offer to acquire securities from a person or company and the offeror knows or ought to know after reasonable enquiry that the person or company acquired the securities in order that the offeror might make use of the exemption under subsection (1), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom an offer to acquire has been made.

##### Same

(3) For the purposes of subsection (1), if an offeror makes an offer to acquire securities from a person or company and the offeror knows or ought to know after reasonable enquiry that the person or company 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 or companies having a direct beneficial interest in those securities, then each of those other persons or companies shall be included in the determination of the number of persons and companies to whom an offer to acquire has been made.

**Same**

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

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

**Non-reporting issuer exemption**

**100.2** A take-over bid is exempt from the formal bid requirements if the offeree issuer is not a reporting issuer and if such other conditions as may be specified by regulation are satisfied.

**Foreign take-over bid exemption**

**100.3** Subject to section 100.5, a take-over bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

- 1. Security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
- 2. The offeror reasonably believes that security holders in Canada beneficially own less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
- 3. The published market on which the greatest dollar volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada.
- 4. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class.

**Exemption, fewer than 50 beneficial owners**

**100.4** Subject to section 100.5, a take-over bid is exempt from the formal bid requirements if both of the following conditions are satisfied:

- 1. The number of beneficial owners of securities of the class subject to the bid in Ontario is fewer than 50 and the securities held by them constitute, in aggregate, less than 2 per cent of the outstanding securities of that class.
- 2. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class.

**Restriction, required disclosure**

**100.5** A take-over bid described in section 100.3 or 100.4 is not exempt from the formal bid requirements unless,

- (a) the information and documents specified by regulation are provided to security holders in Ontario in accordance with the regulations; and
- (b) the information specified by regulation about the bid is made public in accordance with the regulations.

**Exemption by regulation**

**100.6** A take-over bid is exempt from the formal bid requirements if it is exempted by the regulations.

## EXEMPT ISSUER BIDS

### Issuer acquisition or redemption exemption

**101.** An issuer bid for a class of securities is exempt from the formal bid requirements if any of the following conditions is satisfied:

1. 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.
2. 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.
3. 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

**101.1** An issuer bid is exempt from the formal bid requirements 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 the regulations; and
- (b) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the exemption provided by this subsection does not exceed 5 per cent of the securities of that class outstanding at the beginning of the 12-month period.

### Normal course issuer bid exemptions

#### Designated exchange

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

#### Other published markets

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

1. The bid is for not more than 5 per cent of the outstanding securities of a class of securities of the issuer.
2. The aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired in reliance on this exemption by the issuer and any person or company acting jointly or in concert with the issuer within any period of 12 months does not exceed 5 per cent of the outstanding securities of that class at the beginning of the 12-month period.
3. 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 the regulations, plus reasonable brokerage fees or commissions actually paid.

### News release

(3) An issuer making a bid under subsection (1) shall promptly file any news releases that the designated exchange requires to be issued.

### Same

(4) An issuer making a bid under subsection (2) shall issue and file, at least five days before the commencement of the bid, a news release containing the information prescribed by the regulations.

### Definition

(5) In this section,

“designated exchange” means the Toronto Stock Exchange, the TSX Venture Exchange or other exchange designated by the Commission for the purpose of this section.

### Non-reporting issuer exemption

**101.3** An issuer bid is exempt from the formal bid requirements if the issuer is not a reporting issuer and if such other conditions as may be specified by regulation are satisfied.

### Foreign issuer bid exemption

**101.4** Subject to section 101.6, an issuer bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. Security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
2. The offeror reasonably believes that security holders in Canada beneficially own less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
3. The published market on which the greatest dollar volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada.
4. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class.

### Exemption, fewer than 50 beneficial owners

**101.5** Subject to section 101.6, an issuer bid is exempt from the formal bid requirements if both of the following conditions are satisfied:

1. The number of beneficial owners of securities of the class subject to the bid in Ontario is fewer than 50 and the securities held by them constitute, in aggregate, less than 2 per cent of the outstanding securities of that class.
2. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class.

### Restriction, required disclosure

**101.6** An issuer bid described in section 101.4 or 101.5 is not exempt from the formal bid requirements unless,

- (a) the information and documents specified by regulation are provided to security holders in Ontario in accordance with the regulations; and
- (b) the information specified by regulation about the bid is made public in accordance with the regulations.

### Exemption by regulation

101.7 An issuer bid is exempt from the formal bid requirements if it is exempted by the regulations.

### EARLY WARNING SYSTEM

#### Definitions

102. For the purposes of sections 102.1 and 102.2,

“acquiror” means a person or company who acquires a security other than by way of a formal bid; (“acquéreur”)

“acquiror’s securities” means securities of an offeree issuer that are beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an acquiror or by any person or company acting jointly or in concert with the acquiror. (“valeurs mobilières de l’acquéreur”)

#### 10 per cent rule

102.1 (1) Every acquiror who acquires beneficial ownership of, or the power to exercise control or direction over, voting or equity securities of any class of a reporting issuer or securities convertible into voting or equity securities of any class of a reporting issuer that, when added to the acquiror’s securities of that class, would constitute 10 per cent or more of the outstanding securities of that class, shall disclose the acquisition in the manner and form required by regulation.

#### Same, further 2 per cent rule

(2) An acquiror who is required to make disclosure under subsection (1) shall make further disclosure in the manner and form required by regulation each time any of the following events occur:

1. The acquiror or any person or company acting jointly or in concert with the acquiror acquires beneficial ownership of, or the power to exercise control or direction over,
  - i. an additional 2 per cent or more of the outstanding securities of the class to which the disclosure required under subsection (1) relates, or
  - ii. securities convertible into an additional 2 per cent or more of the outstanding securities referred to in subparagraph i.
2. There is a change in any material fact in the disclosure required under paragraph 1 or under subsection (1).

#### Period when acquisitions prohibited

(3) During the period beginning on the occurrence of an event in respect of which disclosure is required to be made under this section and ending on the expiry of one business day after the date that the disclosure is made, the acquiror required to make the disclosure or any person or company acting jointly or in concert with the acquiror shall not acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the disclosure is made or any securities convertible into securities of that class.

#### Exemption

(4) Subsection (3) does not apply to an acquiror who has beneficial ownership of, or the power to exercise control or direction over, securities that, together with the acquiror’s securities of that class, constitute 20 per cent or more of the outstanding securities of that class.

#### Acquisitions during a bid by an acquiror, 5 per cent rule

102.2 (1) If, after a formal bid has been made for voting or equity securities of a reporting issuer and before the expiry of the bid, an acquiror acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to the acquiror’s securities of that class, constitute 5 per cent or more of the outstanding securities of that class, the acquiror shall disclose the acquisition in the manner and form required by regulation.

### Same, further 2 per cent rule

(2) An acquiror who is required to make disclosure under subsection (1) shall make further disclosure in the manner and form required by regulation each time the acquiror or any person or company acting jointly or in concert with the acquiror acquires beneficial ownership of, or the power to exercise control or direction over, an additional 2 per cent or more of the outstanding securities of the class to which the disclosure required under subsection (1) relates.

## APPLICATIONS AND EXEMPTIONS

### Definition

**103.** In sections 104 and 105,

“interested person” means,

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,
- (c) an offeror,
- (d) an acquiror as defined in section 102,
- (e) the Director, and
- (f) any person or company who in the opinion of the Commission or the Superior Court of Justice, as the case may be, is proper to make an application under section 104 or 105, as the case may be.

### Application to the Commission

**104.** (1) On application by an interested person, if the Commission considers that a person or company has not complied with, or is not complying with, a requirement under this Part or the regulations related to this Part, the Commission may make an order,

- (a) restraining the distribution of any document or any communication used or issued in connection with a take-over bid or an issuer bid;
- (b) requiring an amendment to or variation of any document or any communication used or issued in connection with a take-over bid or an issuer bid and requiring the distribution of amended, varied or corrected documents or communications;
- (c) directing any person or company to comply with a requirement under this Part or the regulations related to this Part;
- (d) restraining any person or company from contravening a requirement under this Part or the regulations related to this Part; and
- (e) directing the directors and officers of any person or company to cause the person or company to comply with or to cease contravening a requirement under this Part or the regulations related to this Part.

### Exemptions

(2) On application by an interested person and subject to such terms and conditions as the Commission may impose, if the Commission is satisfied that it would not be prejudicial to the public interest, the Commission may,

- (a) decide for the purposes of section 97.1 that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into despite that section;

- (b) vary any time period set out in this Part or the regulations related to this Part; and
- (c) exempt a person or company from any of the requirements of this Part or the regulations related to this Part.

#### Application to the court

**105.** On application by an interested person, if the Superior Court of Justice is satisfied that a person or company has not complied with a requirement under this Part or the regulations related to this Part, the Superior Court of Justice may make such interim or final order as the Court thinks fit, including, without limitation, an order,

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of a requirement of this Part or the regulations related to this Part;
- (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security;
- (c) requiring any person or company to dispose of any securities acquired under or in connection with a take-over bid or an issuer bid;
- (d) prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; or
- (e) requiring the trial of an issue.

#### TRANSITIONAL MATTERS

##### Transition

**105.1** This Part and the regulations related to it, as they read immediately before this section comes into force, continue to apply in respect of every take-over bid and issuer bid commenced before this section comes into force.

**9. (1) The French version of subsection 131 (2) of the Act is amended by striking out “une circulaire de la direction” and substituting “une circulaire des administrateurs”.**

**(2) The French version of clause 131 (5) (a) of the Act is amended by striking out “la circulaire de la direction” and substituting “la circulaire des administrateurs”.**

**(3) The French version of clause 131 (5) (b) of the Act is amended by striking out “la circulaire de la direction” and substituting “la circulaire des administrateurs”.**

**(4) Subsection 131 (10) of the Act is repealed and the following substituted:**

##### Deemed issuer bid circular

(10) Where the offeror in an issuer bid that is exempted by subsection 101.2 (1) from the formal bid requirements of Part XX is required, by the by-laws, regulations or policies of the applicable designated stock exchange to file with it or deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be an issuer bid circular delivered to the security holders as required by Part XX.

**10. Section 133 of the Act is amended by striking out “were required to be delivered but were not delivered in compliance with section 95 or section 98” and substituting “were required under Part XX to be sent or delivered but were not sent or delivered in accordance with that Part”.**

**11. (1) The French version of clause (a) of the definition of “core document” in section 138.1 of the Act is amended by striking out “une circulaire de la direction” in the portion before subclause (i) and substituting “une circulaire des administrateurs”.**

**(2) The French version of clause (b) of the definition of “core document” in section 138.1 of the Act is amended by striking out “une circulaire de la direction” in the portion before subclause (i) and substituting “une circulaire des administrateurs”.**

(3) The French version of the definition of “expert” in section 138.1 of the Act is amended by striking out “estimateur” and substituting “évaluateur”.

12. (1) The French version of sub-subparagraph 2 ii A of subsection 138.5 (1) of the Act is amended by striking out “le marché officiel” and substituting “un marché organisé”.

(2) The French version of sub-subparagraph 2 ii B of subsection 138.5 (1) of the Act is amended by striking out “marché officiel” and substituting “marché organisé”.

(3) The French version of subparagraph 3 i of subsection 138.5 (1) of the Act is amended by striking out “le marché officiel” and substituting “un marché organisé”.

(4) The French version of subparagraph 3 ii of subsection 138.5 (1) of the Act is amended by striking out “marché officiel” and substituting “marché organisé”.

(5) The French version of sub-subparagraph 2 ii A of subsection 138.5 (2) of the Act is amended by striking out “le marché officiel” and substituting “un marché organisé”.

(6) The French version of sub-subparagraph 2 ii B of subsection 138.5 (2) of the Act is amended by striking out “marché officiel” and substituting “marché organisé”.

(7) The French version of subparagraph 3 i of subsection 138.5 (2) of the Act is amended by striking out “le marché officiel” and substituting “un marché organisé”.

(8) The French version of subparagraph 3 ii of subsection 138.5 (2) of the Act is amended by striking out “marché officiel” and substituting “marché organisé”.

13. (1) The French version of paragraph 27 of subsection 143 (1) of the Act is amended by striking out “valeurs mobilières participantes” and substituting “titres de participation” and by striking out “les valeurs mobilières sont détenues” and substituting “ces valeurs et ces titres sont détenus”.

(2) Paragraph 28 of subsection 143 (1) of the Act is repealed and the following substituted:

28. Regulating take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions, including,
- i. providing for the matters that, under Part XX, may be specified by regulation or required by the regulations or that, under Part XX, must or may be determined or done in accordance with the regulations,
  - ii. varying the requirements of sections 93.1 to 93.4, providing exemptions from any of those sections or removing any exemption set out in those sections,
  - iii. varying the requirements of sections 94 to 99.1 or providing exemptions from any of those sections,
  - iv. removing any exemption set out in sections 100 to 100.4 or 101 to 101.5,
  - v. establishing exemptions under sections 100.6 and 101.7,
  - vi. varying the requirements of sections 102.1 and 102.2 or providing exemptions from either of those sections,
  - vii. prescribing requirements in respect of issuer bids, insider bids, going-private transactions and related party transactions, for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders,
  - viii. prescribing requirements respecting defensive tactics in connection with take-over bids, and
  - ix. varying any or all of the time periods in Part XX.

(3) The French version of subparagraph 39 v of subsection 143 (1) of the Act is amended by striking out “les circulaires de la direction” at the end and substituting “les circulaires des administrateurs”.

**(4) Subsection 143 (1) of the Act is amended by adding the following paragraph:**

52.1 Permitting a distribution or additional distribution under subsection 57 (2.2) to proceed without a receipt for an amendment.

**14. (1) Section 143.10 of the Act is amended by adding the following subsection:**

**Exception**

(1.1) Despite subsection (1), the Commission is not required to publish an agreement, memorandum of understanding or arrangement if the principal purpose of the agreement, memorandum of understanding or arrangement relates to,

- (a) the provision of products or services by a party not named in subsection (1);
- (b) the sharing of costs incurred by a party named in subsection (1); or
- (c) the provision of services by, or the temporary transfer of, an employee of a party named in subsection (1).

**(2) Subsection 143.10 (2) of the Act is amended by adding at the end “or, if publication under subsection (1) is not required, within 60 days after it is delivered to the Minister”.**

**(3) Subsection 143.10 (4) of the Act is repealed and the following substituted:**

**Same**

(4) If the Minister does not approve or reject the agreement, memorandum of understanding or arrangement within the 60-day period described in subsection (2), it comes into effect on the date specified in it or, if no date is specified, upon the expiry of that 60-day period.

**(4) Subsection 143.10 (6) of the Act is repealed.**

**Commencement**

**15. (1) Subject to subsection (2), this Schedule comes into force on the day the *Budget Measures and Interim Appropriation Act, 2007* receives Royal Assent.**

**Same**

**(2) Sections 1, 3, 4, 5, 6, 8, 9, 10, 11 and 13 come into force on a day to be named by proclamation of the Lieutenant Governor.**