

Ontario Securities Commission

Form 62-104F1

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This document is not an official statement of law or policy and should be used for reference purposes only.

**FORM 62-104F1
TAKE-OVER BID CIRCULAR**

Part 1 General Provisions

(a) Defined terms

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

(b) Incorporating information by reference

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

(c) Plain language

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

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;

- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

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

(d) Numbering and headings

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

Part 2 Contents of Take-Over Bid Circular

Item 1. Name and description of offeror

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

Item 2. Name of offeree issuer

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

Item 3. Securities subject to the bid

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

Item 4. Time period

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

Item 5. Consideration

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

Item 6. Ownership of securities of offeree issuer

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

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

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

Item 7. Trading in securities of offeree issuer

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

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

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

Item 8. Commitments to acquire securities of offeree issuer

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

Item 9. Terms and conditions of the bid

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

Item 9.1. Minimum Tender Requirement and Mandatory Extension Period

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

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

Item 10. Payment for deposited securities

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

Item 11. Right to withdraw deposited securities

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

Item 12. Source of funds

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

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

Item 13. Trading in securities to be acquired

Provide a summary showing

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

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

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

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

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

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

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

Item 16. Arrangements with or relating to the offeree issuer

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

Item 17. Purpose of the bid

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

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

Item 18. Valuation

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

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

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

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

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

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

Item 20. Right of appraisal and acquisition

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

Item 21. Market purchases of securities

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

Item 22. Approval of take-over bid circular

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

Item 23. Other material facts

Describe

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

Item 24. Solicitations

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

Item 25. Statement of rights

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

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

Item 26. Certificate

A take-over bid circular certificate form must state:

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

Item 27. Date of take-over bid circular

Specify the date of the take-over bid circular.