

**6.1.2 OSC Notice and Request for Comment - Proposed Rule 62-801 Implementing National Instrument 62-104 Take-Over Bids And Issuer Bids**

**NOTICE AND REQUEST FOR COMMENT  
PROPOSED RULE 62-801 IMPLEMENTING  
NATIONAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS**

**Substance and Purpose**

Proposed Rule 62-801 *Implementing National Instrument 62-104 Take-Over Bids and Issuer Bids* (the Proposed Implementing Rule) is a local rule implementing National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104) in Ontario. The Proposed Implementing Rule revokes certain Ontario rules and recognition orders that will be incorporated in NI 62-104, and also makes consequential amendments to Rule 13-502 *Fees* and the local Ontario rule which implements National Instrument 71-101 *Multijurisdictional Disclosure System*.

**Summary**

The Proposed Implementing Rule revokes each of the following Ontario rules:

- Rule 62-501 *Prohibited Stock Market Purchases of the Offeree's Securities by the Offeror During a Take-Over Bid*, and
- Rule 62-503 *Financing of Take-over Bids and Issuer Bids*.

In addition, the Proposed Implementing Rule revokes Recognition Order 62-904 *In the Matter of the Recognition of Certain Jurisdictions* (ss. 93(1)(e) and 93(3)(h)). Each of the revocations is necessary as the substance of the rules and the recognition order will be incorporated into NI 62-104.

The Proposed Implementing Rule also makes consequential amendments to Rule 13-502 *Fees* and Rule 71-801 *Implementing the Multijurisdictional Disclosure System*. The consequential amendments update these rules by substituting references to NI 62-104 in place of earlier references to the *Securities Act* (Ontario).

**Alternatives Considered**

None.

**Authority**

The following provisions of the Act provide the Ontario Securities Commission (the Commission) with authority to adopt the Proposed Implementing Rule:

- Paragraph 143(1)28 authorizes the Commission to make rules regulating take-over bids and issuer bids.
- Paragraph 143(1)36 authorizes the Commission to make rules varying the Act with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers and the making of take-over bids and issuer bids where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of the Act.
- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including, take-over bid circulars, issuer bid circulars and directors' circulars. Paragraph 143(1)39.1 also authorizes the Commission to make rules governing the approval of any document described in paragraph 143(1)39.
- Paragraph 143(1)40 authorizes the Commission to make rules respecting the designation or recognition of any person, company or jurisdiction if advisable for purposes of the Act.

**Unpublished Studies**

The Commission relied upon no unpublished study, report or other written materials in proposing the Proposed Implementing Rule.

### **Anticipated Costs and Benefits**

For a summary of the anticipated costs and benefits of NI 62-104, see CSA Notice and Request for Comment regarding NI 62-104.

### **Comments**

Interested parties are invited to make written submissions with respect to the Proposed Implementing Rule. Submissions received by July 28, 2006 will be considered. Submissions should be addressed to the Commission at the following address:

John Stevenson  
Secretary to the Commission  
Ontario Securities Commission  
20 Queen Street West, Suite 800, Box 55  
Toronto, Ontario M5H 3S8  
Fax: (416) 593- 2318  
e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

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

Questions may be referred to:

Naizam Kanji  
Manager, Mergers & Acquisitions  
Ontario Securities Commission  
20 Queen Street West, Suite 800, Box 55  
Toronto, Ontario M5H 3S8  
(416) 593-8060  
e-mail: [nkanji@osc.gov.on.ca](mailto:nkanji@osc.gov.on.ca)

### **Text of Proposed Rule**

The text of the Proposed Implementing Rule follows.

**Date:** April 28, 2006

ONTARIO SECURITIES COMMISSION

**RULE 62-801 IMPLEMENTING  
NATIONAL INSTRUMENT 62-104  
TAKE-OVER BIDS AND ISSUER BIDS**

- 1.1 Rule 62-501** – Rule 62-501 *Prohibited Stock Market Purchases of the Offeree’s Securities by the Offeror During a Take-Over Bid* is revoked.
- 1.2 Rule 62-503** – Rule 62-503 *Financing of Take-Over Bids and Issuer Bids* is revoked.
- 1.3 Recognition Order 62-904** – Recognition Order 62-904 *In the Matter of the Recognition of Certain Jurisdictions* is revoked.
- 1.4 Rule 13-502** –
- (1) Item 1, Part G of Appendix C to Rule 13-502 Fees is amended by replacing the words “subsection 100(3) or (7) of the Act” with “section 2.8 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*”.
  - (2) Item 2, Part G of Appendix C to Rule 13-502 is amending by replacing the words “subsection 100(4) of the Act” with “section 2.11 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*”.
- 1.5 Rule 71-801** –
- (1) Section 1.1 of Rule 71-801 *Implementing the Multijurisdictional Disclosure System* is amended by adding the following immediately following subsection (2):
    - “(3) In this Rule, “NI 62-104” means “National Instrument 62-104 *Take-Over Bids and Issuer Bids*”.
  - (2) Part 3 of Rule 71-801 is hereby deleted and replaced by the following:

**“PART 3 BIDS FOR SECURITIES OF U.S. ISSUERS**

**3.1 Application of NI 62-104 to Offerors in Take-over Bids and Issuer Bids** – The following do not apply to a bid made in compliance with Part 12 of NI 71-101 and otherwise in accordance with the NI 62-104:

    - (a) sections 2.2, 2.3, 2.4 and 2.5 of NI 62-104 , except that section 2.4(1) of NI 62-104 applies to a bid if security holders of the offeree issuer whose last address as shown on the books of the issuer is in Canada, as determined in accordance with sections 12.1(2) through (4) of NI 71-101, hold 20% or more of a class of securities that is the subject of the bid;
    - (b) 2.6 of NI 62-104;
    - (c) sections 2.21 and 2.24 of NI 62-104;
    - (d) sections 2.8, 2.9 and 2.10 of NI 62-104, other than:
      - (i) the requirement in section 2.8(1) to deliver a take-over bid circular or an issuer bid circular to all holders in Ontario of securities of the class that is subject to the bid;
      - (ii) the requirement in section 2.9(1), subject to section 2.9(2), to deliver a notice of change to every person or company to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change; and
      - (iii) the requirement in section 2.10(1) to deliver a notice of variation to every person or company to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation;
    - (e) section 2.8(1), 2.9(4) and 2.10(2) of NI 62-104;

- (f) section 2.8 and 2.11 of NI 62-104, other than the requirements in section 2.11 to file any notice of change or variation;
- (g) section 4.1 of NI 62-104 other than:
  - (i) if the take-over bid does not satisfy the eligibility requirements of section 12.3 of NI 71-101, any requirement in Form 62-104F1 prescribed under section 4.1 of NI 62-104 that is applicable because the 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; and
  - (ii) any requirement in Form 62-104 prescribed under section 4.1 of NI 62-104 that is applicable because the offeror anticipates that a going private transaction will follow the take-over bid;
- (h) section 4.2 of NI 62-104 other than, if the issuer bid does not satisfy the eligibility requirements of section 12.3 of NI 71-101, any requirement in Form 62-104 F1 prescribed under section 4.2 of NI 62-104 that is applicable because the bid provides that the consideration for the securities of the offeree issuer is to be, in whole or in part, different securities of the issuer; and
- (i) sections 2.10(5) and 4.5 of NI 62-104.

**3.2 Application of NI 62-104 to MJDS Directors' Circulars and MJDS Individual Director's or Officer's Circulars** – The following do not apply to the directors or the individual directors or officers of an offeree issuer who elect to comply with Part 12 of NI 71-101 instead of provisions of NI 62-104 otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101:

- (a) sections 2.15, 2.16, 2.17, 2.18, 4.3 and 4.4 of NI 62-104, other than:
  - (i) section 2.15(1), except the requirement that a directors' circular be sent to holders of securities that, before the expiration of the bid, are convertible into securities of the class that is subject to the bid;
  - (ii) the requirement in section 2.16(1) to deliver a notice of change to every person or company to whom the directors' circular was required to be delivered, in respect of holders of securities that were not taken up at the date of the occurrence of the change; and
  - (iii) section 2.18(3) of NI 62-104 of NI 62-104, except the requirement to deliver a copy of an individual director's or officer's circular and a notice of change to holders of securities that, before the expiration of the bid, are convertible into securities of the class that is subject to the bid;
- (b) section 2.17 and 2.18 of NI 62-104 other than the requirement in section 140(3) to file every directors' circular, individual director's or officer's circular and any notice of change; and
- (c) sections 2.8(3) and (4), 2.17, 2.18(4), 4.3 and 4.5 of NI 62-104."

**1.6 Effective Date** – This rule comes into force on ●.