Chapter 5

Rules and Policies

5.1.1 Notice of Amendments to OSC Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions and Companion Policy 61-501CP

NOTICE OF AMENDMENTS TO RULE 61-501 – *INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS* AND COMPANION POLICY 61-501CP

Notice of Amendments

The Commission has amended Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* (the "Rule") under section 143 of the *Securities Act* (the "Act").

The amendments and the other material required by the Act to be delivered to the Chair of the Management Board of Cabinet (the "Minister") were delivered on April 28, 2004. If the Minister approves the amendments, the amendments will come into force 15 days after the approval. If the Minister does not approve or reject the amendments, or return them to the Commission for further consideration, the amendments will come into force on July 12, 2004.

The Commission has also made amendments to Companion Policy 61-501CP (the "Companion Policy") under section 143.8 of the Act. Those amendments will come into force on the date that the amendments to the Rule come into force.

Substance and Purpose of the Amendments

The Rule provides security holders of issuers involved in specified types of transactions with the benefits of enhanced disclosure requirements and, in certain cases, independent valuations and majority of minority security holder approval. The amendments are primarily intended to clarify grey areas, reduce the necessity for applications for exemptive relief and generally make the Rule more user friendly.

Details of the proposed amendments were contained in a notice and request for comments, published in (2003), 26 OSCB 1822 (February 28, 2003). After reviewing the comments, the Commission made some changes and published a revised version of the amendments in (2004), 27 OSCB 550 (January 9, 2004) with another request for comments. A list of commenters who responded to the second request for comments, a summary of those comments and the Commission's responses are contained in Appendix A of this Notice. Following review of the comments, the Commission has made a small number of additional changes.

The changes from the proposal that was published on January 9, 2004 are indicated in the black-lined versions of the amended Rule and Companion Policy that accompany this Notice. The Commission does not consider these changes to be material.

Quebec Policy Statement Q-27

Policy Statement Q-27 ("Q-27") is Quebec's equivalent of the Rule. Staff of the Agence nationale d'encadrement du secteur financier (also known as the Autorité des marchés financiers or "AMF") have advised the Commission that the AMF proposes to make the same amendments to Q-27 as are to be made to the Rule and Companion Policy (while maintaining the small number of current differences between the Rule and Q-27), and that it expects to publish them for comment. AMF staff have also advised that they intend to accommodate transactions that comply with the Rule after the amendments come into force in Ontario if they are not yet in force in Quebec.

Authority for the Proposed Amendments

The following provisions of the Act provide the Commission with the authority to make the amendments to the Rule. Subsection 1(1.1) of the Act provides that "going private transaction", "insider bid" and "related party transactions" may be defined in a rule. (Section 1.6 of the proposed amended Rule defines "going private transaction", for purposes of the Act, as having the meaning ascribed to the term "business combination" in the Rule.) Paragraph 143(1)28 authorizes the Commission to make rules to regulate issuer bids, insider bids, going private transactions and related party transactions, including, in clause v, prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders.

Unpublished Materials

In proposing these amendments, the Commission has not relied on any significant unpublished study, report or other materials.

Anticipated Costs and Benefits

The Commission believes that the proposed amendments will enhance efficiency for market participants that are subject to the Rule, as there will be greater clarity regarding the application of the Rule and reduced circumstances requiring valuations and exemptive relief. To the extent that the amendments are substantive in nature, they will have benefits in terms of increased fairness to security holders and reduced regulatory burdens that will outweigh the costs.

Text of Proposed Amendments

The text of the proposed amendments is as follows:

Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* and Companion Policy 61-501CP are amended by deleting them in their entirety, including their titles, and substituting the following:

[The amended Rule and Companion Policy are set out after Appendix A which follows. To assist readers of the Bulletin, the amended Rule and Companion Policy are black-lined to the versions that were published on January 9, 2004.]

May 7, 2004.

APPENDIX A

SUMMARY OF WRITTEN COMMENTS RECEIVED AND RESPONSES OF THE COMMISSION

The Commission received submissions from the following:

Simon Romano
Davies Ward Phillips & Vineberg LLP
TSX Venture Exchange
Torys LLP

The Commission has considered the submissions and thanks the commenters for taking the time to provide their views. The following is a summary of the comments received, together with the Commission's responses.

Section 1.1 – Definitions

1. "business combination"

Comment

Since the amended Rule will expressly cover income trusts, and given the growth in their numbers, one commenter suggested explicitly excluding from the definition of "business combination" a transaction that is similar to an acquisition of securities under a statutory right of acquisition. This would address the circumstance where a trust indenture for an income trust provides for a process similar to that contained in corporate statutes.

Response

The Commission agrees with the commenter and has added wording that contemplates that a non-corporate entity such as an income trust may have a contractual mechanism that is substantially equivalent to the statutory right of acquisition described in section 188 of the *Business Corporations Act* (Ontario). To qualify for the exclusion from the definition, this mechanism must necessarily include a process that is substantially equivalent to the statutory procedure that applies to security holders who choose to demand payment of the fair value of their securities.

2. "collateral benefit"

Comments

One commenter was of the view that the proposed definition was flawed for reasons summarized as follows:

- the definition should not include pre-existing rights, such as contractual rights, and rights represented by loans, leases, purchase agreements, and director-related compensation arrangements;

- in disregarding offsetting costs in the definition, the Commission was ignoring both economic reality and its past decisions – as an example, the commenter referred to a decision of the Commission in which arrangements such as mutual rights of first refusal among controlling shareholders were seen to be normal and, in the context of a take-over bid, the Commission determined that a put option granted to one shareholder was permissible because it was totally counter-balanced by a call option granted by the same shareholder;

- a collateral benefit currently must have the effect of providing greater value to a security holder in order for the benefit to cause the transaction to be a "going private transaction" – apart from employment arrangements, there has been no evidence of any abuse that calls for an approach that ignores business and economic reality by pretending that benefits are without cost;

- the proposed materiality exceptions seem insufficient to handle many common situations – the commenter provided an example of a mid-sized company in which the senior officers would receive golden parachutes exceeding 5 per cent of the value of their equity holdings – another example was the repayment of a demand loan or redemption of publicly traded preferred shares at a pre-established redemption price at the closing of a merger, where the issuer's chief executive officer was the lender or a preferred shareholder – similarly, usual treatments of warrants or stock options could be caught by the definition;

- in one of the proposed materiality exceptions, offsetting costs are taken into account, which seems inconsistent with the general approach;

- the materiality exception thresholds should be raised or changed to a requirement that the board (or independent directors) must come to the conclusion that the benefits, net of offsetting costs, are not material in the circumstances;

- often a growth-oriented small or mid-sized company underpays its senior management to keep costs down and on the basis that they will benefit through their equity stakes – when the company is acquired by a larger enterprise, members of the target's management and board of directors who join the acquirer will likely benefit from higher compensation and directors' and officers' ("D&O") insurance, and those leaving will likely benefit from run-off D&O insurance – there should therefore be an exemption for persons who will be compensated or receive benefits in accordance with the acquirer's practices or for run-off D&O insurance; and

- if a benefit prevents a director or officer's votes from being counted as part of the minority vote of shareholders, even in the absence of any real value attached to the benefit, his or her ability to vote as a director or act as a committee member may be seen to be affected as well.

One commenter thought the materiality exceptions in the definition should apply to a person who was formerly an employee or director of the issuer and has subsequently been retained as a consultant of the successor to the business of the issuer. As proposed in the amended Rule, the exceptions only applied to services as an employee or director.

One commenter agreed with the general approach of requiring minority approval to address the policy concern that a related party receiving a collateral benefit might favour a business combination for reasons other than the consideration it would receive for its equity securities. However, the commenter thought the materiality exceptions should apply to all benefits, not just employee or director-related benefits.

One commenter was supportive of the new proposed exceptions, but thought the Commission's earlier proposed exception where related parties receiving benefits held, in the aggregate, less than 10% of the outstanding securities should be retained. In the commenter's view, it was unlikely that those persons would affect the outcome of the vote, the public policy rationale underlying minority approval would not be compromised by such an approach, and the minority approval requirement would not be unduly imposed on transactions where potential conflicts of interest were limited to a small number of security holders.

Response

The main implication of a benefit falling into the definition of "collateral benefit" in the amended Rule is that the votes of the related party receiving the benefit will not be counted in a minority approval vote on a business combination. The amended Rule will not prohibit the transactions described by the first commenter, nor will it attribute any impropriety to those transactions. The definition and its related provisions are based on the principle that when a majority vote of security holders can force the minority to relinquish their securities against their will at a price they may regard as inadequate, it is reasonable to require that the security holders comprising the majority be as free from conflicts of interest as possible so that their interests are aligned with those of the minority. The magnitude of a conflict of interest, or its possible effect on the outcome of a vote of security holders, does not depend on when the collateral benefit giving rise to the conflict was negotiated.

The existence of offsetting costs does not eliminate the conflict of interest. It is reasonable to assume that a related party entering into a transaction with an issuer or with an acquirer of an issuer generally does so for the purpose of deriving a benefit, even after offsetting costs are taken into account. The benefit, or value, is obtained from the transaction as a whole, and the related party cannot be said to derive no value from a transaction simply because consideration is flowing both ways.

Based on submissions in response to the previous request for comments, the originally proposed amendments were modified to accommodate the changes to employee and director-related benefits that typically occur in a business combination. In determining whether the amended Rule's materiality exception applies when these types of arrangements are adjusted (such as where one type of employee benefit is increased and another decreased), it is reasonable for the independent committee to examine the benefit package as a whole. Given the materiality exceptions, it would not normally be expected that D&O insurance would cause the recipient's votes to be excluded from a vote on a business combination.

The Commission believes that the proposed materiality exceptions strike a reasonable balance between the interests of related parties who receive employee or director-related benefits from business combinations on the one hand, and persons whose securities are expropriated on the other. Raising the materiality thresholds would increase unduly the likelihood of security holders with a significant conflict of interest influencing the outcome of a minority vote. In addition, replacing the proposed exceptions with an exception where the board or independent committee concludes that the benefits are immaterial would reduce the level of certainty and could result in inconsistent interpretations by boards of different issuers in similar fact situations.

On the comment regarding the possible effect the amended Rule's treatment of collateral benefits could have on a person's perceived ability to vote as a director or act as a committee member, the Commission does not consider this to be a concern that would justify compromising fairness to security holders in the context of a conflict of interest.

The Commission agrees with the comment that the materiality exceptions should apply to a consultant (as defined in Multilateral Instrument 45-105) and has made this change.

The materiality exceptions reflect the general public acceptance of the fact that adjustments to employee benefits and similar service-related arrangements are often integral components of a business combination. Other types of extra benefits that related parties receive from a business combination do not necessarily share this acceptance. Extending the materiality exceptions to other types of benefits would indicate that related parties are generally entitled to premiums of up to 5% above the consideration that other security holders receive in a business combination, without minority approval. This is not the intent of the exceptions. The materiality of those benefits can be a factor for the minority security holders to take into account when voting on the business combination.

The Commission believes that the two materiality exceptions in the amended Rule are appropriate as replacements for, rather than additions to, the previously proposed exception where related parties receiving benefits held, in the aggregate, less than 10% of the outstanding securities. While in most circumstances, holdings of less than 10% would not be expected to determine the outcome of a vote, this may not be the case for a controversial transaction where the vote is close.

3. "income trust"

Comment

One commenter thought the amended Rule's definition may not extend to real estate investment trusts owning their assets directly. The commenter also thought the definition may be too broad and that perhaps the term should be left undefined.

Response

For a real estate investment trust that owns its assets directly, the amended Rule will operate in the same way as for other entities that do not fall within the definition of "income trust". The Commission believes that the definition helps to clarify the circumstances in which section 1.4 of the amended Rule applies and that its meaning will generally be understood to apply to the structure typically associated with income trusts. If unusual circumstances arise, exemptive relief may be sought.

4. "interested party"

Comment

One commenter referred to one of the Commission's responses in the summary of comments and responses contained in the January 9, 2004 notice. The Commission said that for a related party transaction, a "party to the transaction" does not include a person whose sole connection with the transaction arises from the fact that his or her employment arrangements will be affected by it. The commenter found the word "sole" a little worrying and asked what would be the case if the person was also a security holder, director or officer of a party.

Response

"Party" in the definition should be interpreted as having its normal meaning, which does not include a security holder, director or officer of a named party. Where the Rule is intended to cover indirect parties (as interpreted in section 2.4 of the amended Companion Policy), this is made explicit.

5. "related party transaction"

Comments

The definition includes, in paragraph (l), a material amendment to the terms of an outstanding debt, liability or credit facility as between an issuer and a related party. One commenter was concerned that, particularly in a default or troubled company scenario, the paragraph would require a lender who is a related party to seek minority approval to amend a loan to involve equity or voting securities. The commenter said that this may discourage credit and/or be unfair to lenders if parties without a real stake or legitimate economic interest get a veto right. The commenter also asked whether paragraph (f) of the definition of "related party" (which includes a person who manages the issuer under a contractual arrangement) could capture a lender under a credit agreement in a troubled company situation. To avoid this possibility, the commenter thought a bona fide lender should be excluded from that definition, as it is in the amended Rule's definition of "control block holder".

Response

The financial hardship exemption in the Rule was designed to address the types of circumstances on which these comments were mainly focused. In the absence of financial hardship, minority approval may be appropriate (including where the related

party falls within the Rule's definition of "bona fide lender" but also manages the affairs of the issuer to a substantial degree), or exemptive relief may be sought to address unusual situations.

6. Section 1.3 – Transactions by Wholly-Owned Subsidiary Entity

Comment

This section deems a transaction of a wholly-owned subsidiary of an issuer to be a transaction of the issuer for the purposes of the Rule. One commenter raised the scenario of a wholly-owned subsidiary that was a reporting issuer with preferred shares outstanding, and its parent being a non-reporting issuer. The commenter asked if a transaction by the subsidiary would be exempted from the Rule on the basis of the parent not being a reporting issuer.

Response

"Also" has been inserted into the section to clarify that the deeming provision does not preclude the application of the Rule to a wholly-owned subsidiary that is a reporting issuer.

7. Section 1.4 – Transactions by Underlying Operating Entity of Income Trust

Comment

One commenter said that in some cases income trusts do not have control of one or more underlying businesses, making the section inappropriate in those cases. The commenter asked if the section was necessary.

Response

The Commission believes that the section is necessary to address conflicts of interest in connection with transactions that can affect materially the assets on which the value of an income trust depends. If an income trust is unable to comply with the Rule due to its lack of control over a transaction undertaken by its underlying operating entity, it may seek exemptive relief.

8. Section 1.5 – Redeemable Securities as Consideration in Business Combinations

Comment

One commenter thought the section should clarify that, for the purposes of the Rule, only the cash proceeds of redemption, and not the redeemable securities, are deemed to be consideration received by security holders in a business combination.

Response

The Commission agrees with the commenter and has made the change.

9. Paragraph 4.4(2)(b) – Determining Outstanding Securities for Previous Arm's Length Negotiations Exemption

Comment

One commenter asked if the paragraph should be amended in light of its reference to National Instrument 62-102 – *Disclosure of Outstanding Share Data*, which was to be repealed.

Response

The subject matter of National Instrument 62-102 is being shifted to section 5.4 of the recently enacted National Instrument 51-102 - *Continuous Disclosure Obligations* over a transitional period that ends on May 19, 2005. References to the new provision have been added to this and other applicable parts of the amended Rule, including the corresponding exemption for insider bids.

10. Section 4.5 – Minority Approval for Business Combination

Comments

One commenter thought a related party transaction that is connected with a business combination should not trigger the minority approval requirement for the business combination if the related party transaction does not meet a materiality test, as is the case for certain types of collateral benefits in the amended Rule. The commenter also thought a materiality test should apply where a related party receives consideration for non-equity securities. Even where the consideration for the non-equity securities exceeds the materiality threshold, the commenter suggested that it would not be appropriate to require minority approval if there

are non-related parties who are receiving the same consideration as the related party on a per security basis (such as where the securities consist of publicly held debt or preferred shares). According to the commenter, the arm's length participation should provide comfort that the terms of those arrangements are commercial and fair.

Response

As discussed in section 2 above, the materiality exceptions for collateral benefits are confined to employee and other service-related benefits, which are generally accepted as integral components of a typical business combination. In other conflict of interest situations, it is reasonable to allow the unconflicted security holders to make the decision on the business combination. Attaching a value to a connected transaction can be subjective, and its significance can be addressed by the minority security holders through their vote. This includes a transaction where a related party receives consideration for non-equity securities that are unrelated to services as an employee, director or consultant.

If there are non-related parties that receive the same consideration as a related party for non-equity securities, this does not necessarily demonstrate that the related party is not deriving a benefit from the transaction. It may just be evidence that the consideration represents at least (and possibly more than) the fair market value of those securities.

11. Current Paragraph 5.1(k) – Exercise of Conversion Right

Comment

One commenter said that current paragraph 5.1(k) of the Rule was designed to confirm that if a related party bought a convertible security or similar instrument, the exercise of the conversion or similar right would not be subject to the Rule's requirements for related party transactions. The commenter thought it seemed useful to preserve the paragraph.

Response

The amended Rule maintains, and expands on, this exception in subparagraph 5.1(h)(iii).

12. Section 5.5, Para. 4 – Formal Valuation Exemption for Distribution of Securities for Cash

Comment

This exemption is conditional on neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party having knowledge of material, undisclosed information regarding the issuer or its securities. One commenter had previously commented that the proposed transaction itself should be excluded from this condition. The Commission had responded that this was not considered necessary because a transaction that was significant enough to be covered by the exemption would normally be publicly announced before it was carried out. The commenter agreed with this response if "carried out" meant "closed", but said if it meant "agreed to", as might be expected, normally an issuer would not want to publicly disclose a possible transaction until it had a binding agreement. Therefore, the commenter thought it essential that the proposed transaction be excluded from the condition to make the exemption workable.

Response

The Commission believes that the Rule's definition of "related party transaction" makes it clear that an issuer has not done a related party transaction merely by agreeing to do one. Since the exemption in question does not refer to the time the transaction is agreed to, the proper time for determining whether the condition is met is the time of the closing of the transaction, not the time of the agreement. Accordingly, the Commission still considers it unnecessary to add extra wording to exclude the transaction itself from the condition.

13. Subsection 5.7(1), Para. 3 – Minority Approval Exemption for Distribution for Cash Not Exceeding $2,500,000

Comments

This exemption will apply to issuers listed or quoted on the TSX Venture Exchange ("TSX Venture") and other junior markets. The exemption will be conditional on the issuer having at least one non-employee director who is independent from the transaction (i.e. is not one of the purchasers of securities in the transaction and does not have an association with a purchaser, as described in the Rule), and on approval of the transaction by at least two-thirds of the directors meeting that description.

TSX Venture commented that it was particularly supportive of the introduction of this exemption, but objected to the condition of approval by non-employee, independent directors. According to TSX Venture,

- the condition will severely limit the ability of junior issuers to qualify for the exemption;

- the condition is not consistent with the requirements and realities of the financing process for junior issuers;

- the pool of independent directors for junior issuers is very limited, and the condition effectively prohibits them from participating in small private placements, as the costs of obtaining minority approval in relation to their participation will often make a small financing uneconomic in terms of cost and time required to complete;

- the burdens to the issuer of the requirement for minority approval of private placements far outweighs any shareholder protection that would be afforded by the condition, particularly for the smaller financings frequently undertaken by junior issuers; and

- if a minority approval requirement is to be imposed, the exemption should take into account the realities of board composition for junior issuers and require only approval by directors that do not have a direct interest in the financing.

TSX Venture also submitted that, in order to relieve emerging issuers from the cost burdens of holding a meeting to obtain minority approval, the Rule should permit issuers to obtain shareholder approval by means of informal written consents from shareholders.

One commenter was unclear of the meaning of subparagraph (b), which describes the size test for the exemption in terms of fair market values, given that the exemption deals with transactions in which the consideration is cash. On the same basis, the commenter also thought it was unclear how subsection 5.7(2), which requires aggregation of the fair market values of connected transactions in determining whether a minority approval exemption based on transaction size is available, applied to the $2,500,000 exemption.

Response

TSX Venture policies require each of its listed issuers to have at least two non-employee directors. The concerns outlined by TSX Venture will only come into play when every non-employee director of an issuer is a purchaser of securities in a related party transaction, or has a significant relationship with a purchaser. Where an issuer proposes to increase the number of its outstanding equity securities by more than 25% by issuing securities to related parties at a price that could be up to 25% below the market price without security holder approval, it is reasonable to require that there be at least one director to approve it who is free from an actual or reasonably perceived conflict of interest.

Section 3.1 of the amended Companion Policy provides for the possibility of a discretionary exemption being granted to permit an issuer to satisfy the minority approval requirement without a meeting of security holders by demonstrating that the approval would be obtained if a meeting were held. The exemption has not been made automatic, mainly because the Director should be satisfied that the security holders who advise of their approval have adequate disclosure regarding the transaction, and this should be accomplished as part of the exemption application process.

Minor drafting changes have been made in response to the comments regarding the clarity of subparagraph (b) and the application of subsection 5.7(2) to the exemption.

14. Subsection 5.7(3) – Amendment to Security, Loan or Credit Facility – Minority Approval Exemptions

Comment

Under this provision, if a related party transaction is a material amendment to the terms of a security, loan or credit facility, the size of the whole transaction, not just the amendment, must be taken into account in determining whether the minority approval exemptions based on the size of the transaction apply. Under other provisions of the Rule, if the transaction, as amended, involves warrants, the size calculation must include the current market value of the maximum number of securities or other consideration issuable or payable by the issuer on exercise of the warrants. One commenter thought that since this applies even though the warrants may have no current value, the provisions seem to ignore economic reality, and to be inappropriate.

Response

Among other things, subsection 5.7(3) reflects the fact that an amendment involving the introduction of new warrants, or a change in the terms of existing warrants (such as the lowering of the exercise price), can create the possibility of substantial dilution to security holders under circumstances where that possibility may have been remote or non-existent prior to the amendment. Although the exercise of the warrants may not be a certainty immediately after the amendment occurs (for example, if they are “out of the money” at that point in time), a transaction that gives rise to, or increases, the likelihood of a substantial issuance of securities to related parties of the issuer should be addressed by the Rule, based on the size of the potential dilution.

15. Subsection 8.1(2) – Minority Approval – General

Comment

One commenter thought paragraph (c) seems hard to apply to a person who is a related party of an interested party solely in his or her capacity as a director of the issuer. The commenter asked if it should be clarified that such a director can vote.

Response

While not referring explicitly to a director of the issuer, paragraph (c) does not prohibit such a director from voting if he or she is independent from interested parties. The Commission is reluctant to add to the length of the provision if it is not strictly necessary.

16. Companion Policy – Subsection 2.1(5) – Principle of Equal Treatment in Business Combinations

Comment

One commenter thought the intention behind this subsection was unclear, especially given the exemptive relief the Commission had granted in the past to allow issuers to purchase their own shares from a shareholder, often subject to minority approval. The commenter said that it is somewhat hard to weigh differential treatment against a principle and asked what the Commission's concern was if minority approval was obtained.

Response

The subsection reflects the Commission's view that in a transaction where publicly held securities are expropriated, the Commission may have public interest concerns if related parties are given an unfair advantage. Minority approval will usually address conflict of interest concerns, but there may be circumstances where a proposed transaction that is fundamentally unfair to minority security holders should not be imposed on those who object to it, even if a majority of the others are willing to acquiesce to it. An example would be an expropriation transaction where large security holders are paid substantially more than other holders for the sole reason that the large holders have demanded more. Among other things, this would run directly contrary to the principles of fairness underlying take-over bid law.

17. Stock Exchange Bids

Comment

One commenter said that since the Toronto Stock Exchange has indicated that it intends to eliminate the possibility of formal bids being carried out through its facilities, perhaps references to stock exchange bids in the Rule should be removed.

Response

TSX Venture has now indicated a similar intention to the Commission, and the references have accordingly been removed from the amended Rule. The stock exchanges have advised the Commission that if they have not removed their formal bid provisions by the time the amended Rule goes into effect, they will notify the Commission of any proposed formal bid through their facilities so that the Rule's safeguards can be applied if necessary.

18. References to Security Holders in Canada

Comments

One commenter asked if the provisions in the Rule that refer to security holders in Canada should refer to Ontario holders instead, given that other provinces generally do not have the Rule. (Quebec is the only other jurisdiction that has the equivalent of the Rule.) The commenter also asked how the Rule would be affected by the Uniform Securities Law Project of the Canadian Securities Administrators.

Response

The Rule's references to security holders in Canada are made primarily in the descriptions of circumstances in which identical treatment of security holders will cause certain definitions or requirements in the Rule to not apply. The references recognize that there may be circumstances where laws of a foreign country may justify differential treatment of security holders in that country. The references are to Canada and not Ontario because there generally will not be similar justifications for non-identical treatment of security holders within Canada, where the laws regarding take-over bids and distributions of securities are similar

among the jurisdictions. This view is reinforced in National Policy 62-201 – *Bids Made Only in Certain Jurisdictions*. Any effect that the Uniform Securities Law Project may have on the Rule has not yet been determined.

19. Transitional Considerations

Comments

One commenter thought transitional provisions seemed necessary to enable the completion of any transaction that, prior to the amendments coming into force, are agreed to and proceeding under an exemption that will be amended or repealed.

Response

Due to the nature of the amendments, which for the most part ease the Rule's regulation of related party transactions, the Commission does not expect a significant number of transitional issues to arise. Rather than lengthening the Rule to address a very temporary situation that is unlikely to have an appreciable effect on transactions, the Commission intends to address any transitional issue that may arise in a manner that does not unduly impede the completion of a transaction.