The Ontario Securities Commission

Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids*, National Policy 62-203 *Take-Over Bids and Issuer Bids* and Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*

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Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids*, National Policy 62-203 *Take-Over Bids and Issuer Bids* and Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*

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Ontario Securities Commission Rule 62-504
Take-Over Bids and Issuer Bids,
National Policy 62-203 *Take-Over Bids and Issuer Bids*
and Multilateral Instrument 61-101
Protection of Minority Security Holders in Special Transactions

NOTICE OF FINAL RULE UNDER THE SECURITIES ACT
ONTARIO SECURITIES COMMISSION RULE 62-504
TAKE-OVER BIDS AND ISSUER BIDS

Introduction

The Ontario Securities Commission (the "OSC" or the "Commission") has, pursuant to section 143 of the *Securities Act* (Ontario) (the "Act"), made OSC Rule 62-504 *Take-Over Bids and Issuer Bids* (the "Rule"). The Commission published the Rule for comment on April 6, 2007 at (2007), 30 OSCB 3215 (the "Proposed Rule").

The Rule was delivered to the Minister of Finance (the "Minister") on December 6, 2007. The Commission has requested expedited review of the Rule by the Minister. If the Minister approves the Rule by January 17, 2008, the Rule will come into force on February 1, 2008. If the Minister does not approve or reject the Rule or return the Rule for further consideration, the Rule will come into force on February 19, 2008.

Substance and Purpose of the Rule

As part of the Canadian Securities Administrators (the "CSA") initiative to harmonize and streamline securities law in Canada, the CSA published for comment National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the "Proposed National Rule"). Those CSA jurisdictions that regulate bids recommended to their respective governments legislative amendments and rule-making authority that would remove detailed bid provisions from statutes and substitute general "platform" provisions to enable regulators to harmonize, streamline and update bid requirements in the Proposed National Rule. In Ontario, the government is seeking to achieve the same harmonization and modernization effect through proposed amendments to Part XX - Take-Over Bids and Issuer Bids (the "Revised Part XX") of the Act introduced in Schedule 38 to Bill 187 *Budget Measures and Interim Appropriation Act, 2007* and by adoption of the Rule.

The Commission has sought the Minister's approval of the Rule to take effect February 1, 2008. The Commission has also requested the Minister seek proclamation of the Revised Part XX so it comes into force on the same date as the Rule. When in force, the Revised Part XX and the Rule will comprise a new take-over bid and issuer bid regime in Ontario.

The Proposed National Rule will be implemented as Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* ("MI 62-104") in jurisdictions other than Ontario. Subject to all necessary ministerial approvals, MI 62-104 will come into force in the other CSA jurisdictions on February 1, 2008.

Attached as Appendix A is a table of concordance for (i) MI 62-104, (ii) the Revised Part XX and the Rule, and (iii) the provisions of Ontario securities legislation currently in effect.

Summary of Comments and Responses

Attached as Appendix B is a summary of the written comments received on the Proposed Rule and the response of the Commission to the significant issues and concerns brought to the attention of the Commission.

Changes to the Proposed Rule

The Commission has made changes to the Proposed Rule. However, as these changes are not material, the Rule is not being published for a further comment period. The following are the most significant changes to the Proposed Rule.

Section 2.1 Acquisitions during formal take-over bid

Paragraph 2.1(1)(a) of the Proposed Rule clarified that an offeror wishing to rely on the exception to the restriction on acquisitions during a formal take-over bid in subsection 93.1(2) of the Revised Part XX must have, on the date of the bid, an intention to make purchases during the bid and that intention must be stated in the bid circular. We have further amended paragraph 2.1(1)(a) to provide a process for an offeror who does not have, on the date of the bid, an intention to make purchases, to later change its intention and make purchases.

Although we do not expect that a change in an offeror's intention to make purchases during a formal take-over bid would typically constitute a change in information in a bid circular that would necessitate the sending of a notice of change, each offeror should consider the effect of a change in intention to make purchases in the particular circumstances of the bid.

Section 4.1 Prohibition against collateral agreements - exception

We have deleted the requirement in the Proposed Rule that an independent qualified person confirm the independent committee's determination that a security holder is providing at least equivalent value in exchange for a benefit and have revised section 4.1 to make it easier to understand. We have also added guidance in National Policy 62-203 *Take-Over Bids and Issuer Bids* concerning the independent committee's determination of equivalent value.

Section 6.2 Required disclosure, exempt take-over bid or exempt issuer bid

We have revised the disclosure required to rely on the foreign take-over bid or foreign issuer bid exemption to provide that any non-English bid materials that are sent to Ontario security holders must be accompanied by a summary of the terms of the bid prepared in English. Further, where bid materials are not sent to security holders generally but a notice or advertisement of the bid is published in the jurisdiction where the offeree issuer is incorporated or organized, paragraph 6.2(1)(c) of the Rule requires that an advertisement of the bid be published in Ontario in at least one major daily newspaper specifying where and how security holders may obtain a copy of, or access to, the bid documents.

Text of the Rule

The text of the Rule follows after Appendix B.

December 14, 2007

APPENDIX A

TABLE OF CONCORDANCE

MI 62-104	New Ontario Provision	Current Equivalent
1.1 Definitions		
"Act"	**None**	**None**
"associate"	**1(1) OSA[1]**	**1(1) Act[2]**
"bid circular"	**89(1) OSA**	**None**
"business day"	**89(1) OSA**	**89(1) Act**
"class of securities"	**89(1) OSA**	**89(1) Act**
"consultant"	**1.1 Rule[3]**	**None**
"equity security"	**89(1) OSA**	**89(1) Act**
None	**89(1) OSA *"formal bid"***	**89(1) Act**
None	**89(1) OSA *"formal bid requirements"***	**None**
None	**89(1) OSA *"formal issuer bid"***	**None**
None	**89(1) OSA *"formal take-over bid"***	**None**
"issuer bid"	**89(1) OSA**	**89(1) Act**
"offer to acquire"	**89(1) OSA**	**89(1) Act**
"offeree issuer"	**89(1) OSA**	**89(1) Act**
"offeror"	**89(1) OSA**	**89(1) Act**
"offeror's securities"	**89(1) OSA**	**89(1) Act**
"person"	**1(1) OSA *"company"*, *"person"***	**1(1) Act *"company"*, *"person"***
"published market"	**89(1) OSA**	**89(1) Act**
"standard trading unit"	**1.2 Rule**	**None**
"subsidiary"	**89(1) OSA**	**1(4) Act**
"take-over bid"	**89(1) OSA**	**89(1) Act**
1.2 Definitions for purposes of the Act	**None**	**None**
1.3 Affiliate	**89(2) OSA**	**1(2) Act**
1.4 Control	**89(3) OSA**	**1(3) Act**
1.5 Computation of time	**89(4) OSA**	**89(2) Act**
1.6 Expiry of the bid	**98.4 OSA**	**89(2) Act**
1.7 Convertible securities	**89(5) OSA**	**89(3) Act**
1.8(1) Deemed beneficial ownership	**90(1) OSA**	**90(1) Act**
1.8(2)	**90(2) OSA**	**90(3) Act**
1.8(3)	**90(3) OSA**	**90(2) Act**
1.8(4)	**90(4) OSA**	**None**
1.9(1) Acting jointly or in concert	**91(1) OSA**	**91(1) Act**
1.9(2)	**91(2) OSA**	**91(2) Act**
1.9(3)	**91(3) OSA**	**None**
1.10 Application to direct and indirect offers	**92 OSA**	**92 Act**
1.11 Determination of market price	**1.3 Rule**	**183 Reg.[4]**
2.1 Definition of "offeror"	**93 OSA**	**94(1) Act**
2.2(1) Restrictions on acquisitions during take-over bid	**93.1(1) OSA**	**94(2) Act**
2.2(2)	**93.1(5) OSA 2.1(2) Rule**	**185(1) Reg.**
2.2(3)	**93.1(2) OSA 2.1(1) Rule**	**94(3) Act 188 Reg. 2.2 OSC Rule 62-501**

1 Refers to the *Securities Act* (Ontario) in effect on February 1, 2008.

2 Refers to the *Securities Act* (Ontario) in effect on December 14, 2007.

3 Refers to Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids*.

4 Regulation 1015 made under the *Securities Act* (Ontario).

MI 62-104	New Ontario Provision	Current Equivalent
2.2(4)	93.1(3) OSA	None
2.3(1) Restrictions on acquisitions during issuer bid	93.1(4) OSA	94(4) Act
2.3(2)	93.1(5) OSA 2.2 Rule	94(4) Act
2.4(1) Restrictions on acquisitions before take-over bid	93.2(1) OSA	94(5) Act
2.4(2)	93.2(3) OSA 2.3(2) Rule	186 Reg.
2.5 Restrictions on acquisitions after bid	93.3(1) OSA	94(6) Act
2.6 Exception	93.2(2) OSA/2.3(1) Rule 93.3(2) OSA/2.4 Rule	94(7) Act
2.7(1) Restrictions on sales during formal bid	93.4(1) OSA	94(8) Act
2.7(2)	93.4(2) OSA	94(9) Act
2.7(3)	93.4(3) OSA 2.5 Rule	185(2) Reg.
2.8 Duty to make bid to all security holders	94 OSA	95. 1 Act
2.9(1) Commencement of bid	94.1(1) OSA	100(1), (2), (7) Act
2.9(2)	94.1(2) OSA	100(2) Act
2.10(1) Offeror's circular	94.2(1) OSA 3.1 Rule	98(1), (7) Act 189 Reg.
2.10(2)	94.2(2) OSA	100(7) Act
2.10(3)	94.2(3) OSA	100(3) Act
2.10(4)	94.2(4) OSA	100(3) Act
2.11(1) Change in information	94.3(1) OSA	98(2) Act
2.11(2)	94.3(2) OSA	98(3) Act
2.11(3)	94.3(3) OSA	None
2.11(4)	94.3(4) OSA 3.4 Rule	98(7) Act 193 Reg.
2.12(1) Variation of terms	94.4(1) OSA	98(4) Act
2.12(2)	94.4(2) OSA 3.4 Rule	98(7) Act 193 Reg.
2.12(3)	94.4(3) OSA	98(5) Act
2.12(4)	94.4(4) OSA	98(6) Act 195(2) Reg.
2.12(5)	94.4(5) OSA	195(1) Reg.
2.13 Filing and sending notice of change or notice of variation	94.5 OSA	100(4) Act
2.14(1) Change or variation in advertised take-over bid	94.6(1) OSA	100(9) Act
2.14(2)	94.6(2) OSA	100(10) Act
2.15(1) Consent of expert - bid circular	94.7(2) OSA	196 Reg.
2.15(2)	94.7(1) OSA	196 Reg.
2.16(1) Delivery and date of bid documents	94.8(1) OSA	100(6) Act
2.16(2)	94.8(2) OSA	100(6) Act
2.16(3)	94.8(3) OSA	100(8),(9) Act
2.17(1) Duty to prepare and send directors' circular	95(1) OSA	99(1) Act
2.17(2)	95(2) OSA	99(2), (4) Act
2.17(3)	95(3) OSA	99(5) Act
2.17(4)	95(4) OSA 3.2 Rule	99(8) Act 189 Reg.
2.18(1) Notice of change	95.1(1) OSA	99(6)(a) Act
2.18(2)	95.1(2) OSA 3.4 Rule	99(8) Act 194 Reg.
2.19 Filing directors' circular or notice of change	95.2 OSA	100(5) Act
2.20(1) Individual director's or officer's circular	96(1) OSA	99(3) Act

MI 62-104	New Ontario Provision	Current Equivalent
2.20(2)	96(2) OSA	99(6)(b) Act
2.20(3)	96(3) OSA 3.3 Rule	99(8) Act 189 Reg.
2.20(4)	96(4) OSA	99(6)(b) Act
2.20(5)	96(5) OSA	99(7) Act
2.20(6)	96(6) OSA	100(5) Act
2.20(7)	96(7) OSA 3.4 Rule	99(8) Act 194 Reg.
2.21 Consent of expert, directors' circular, etc.	96.1 OSA	196 Reg.
2.22(1) Delivery and date of offeree issuer's documents	96.2(1) OSA	100(6) Act
2.22(2)	96.2(2) OSA	100(6) Act
2.23(1) Consideration	97(1) OSA	97(1) Act
2.23(2)	97(2) OSA	None
2.23(3)	97(3) OSA	97(3) Act
2.24 Prohibition against collateral agreements	97.1(1) OSA	97(2) Act
2.25(1) Collateral agreements - exception	97.1(2) OSA 4.1(1) Rule	None
2.25(2)	4.1(2) Rule	None
2.25(3)	4.1(3) Rule	None
2.25(4)	4.1(4) Rule	None
2.26(1) Proportionate take up and payment	97.2(1) OSA	95.7 Act
2.26(2)	97.2(3) OSA 4.2(1) Rule	None
2.26(3)	97.2(3) OSA 4.2(2) Rule	None
2.26(4)	97.2(2) OSA	None
2.27(1) Financing arrangements	97.3(1) OSA	96 Act
2.27(2)	97.3(2) OSA	1.1 OSC Rule 62-503
2.28 Minimum deposit period	98(1) OSA	95.2 Act
2.29 Prohibition on take up	98(2) OSA	95.3 Act
2.30(1) Withdrawal of securities	98.1(1) OSA	95.4 Act
2.30(2)	98.1(2) OSA	95.5 Act
2.30(3)	98.1(3) OSA	95.6 Act
2.30(4)	98.1(4) OSA	95.6 Act
2.31 Effect of market purchases	98.2 OSA	95.8 Act
2.32(1) Obligation to take up and pay for deposited securities	98.3(1) OSA	95.9 Act
2.32(2)	98.3(2) OSA	95.10 Act
2.32(3)	98.3(3) OSA	95.11 Act
2.32(4)	98.3(4) OSA	95.12 Act
2.32(5)	98.3(5) OSA	None
2.32(6)	98.3(6) OSA	95.12.1 Act
2.33 Return of deposited securities	98.5 OSA	None
2.34 News release on expiry of bid	98.6 OSA	95.13 Act
3.1 Language of bid documents	None	None
3.2(1) Filing of documents	98.7 OSA 5.1(1) Rule	None
3.2(2)	5.1(2) Rule	None
3.2(3)	5.1(3) Rule	None
3.2(4)	5.1(4) Rule	None
3.2(5)	5.1 (5) Rule	None
3.2(6)	5.1 (6) Rule	None
3.2(7)	5.1 (7) Rule	None
3.3(1) Certification of bid circulars	99(1) OSA	Item 24 Form 32 Item 31 Form 33
3.3(2)	99(2) OSA	Item 24 Form 32 Item 31 Form 33

MI 62-104		New Ontario Provision	Current Equivalent
3.3(3)		99(3) OSA	Item 18 Form 34
3.3(4)		99(4) OSA	Item 14 Form 35
3.3(5)		99(5) OSA	202 Reg.
3.4(1)	Obligation to provide security holder list	99.1(1) OSA	None
3.4(2)		99.1(2) OSA	None
4.1	Normal course purchase exemption	100 OSA	93(1)(b) Act
4.2(1)	Private agreement exemption	100.1(1) OSA	93(1)(c) Act 184 Reg.
4.2(2)		100.1(2), (3) OSA	93(2) Act
4.2(3)		100.1(4) OSA	93(2) Act
4.3	Non-reporting issuer exemption	100.2 OSA 6.1 Rule	93(1)(d) Act
4.4	Foreign take-over bid exemption	100.3, 100.5 OSA 6.2(1) Rule	None
4.5	De minimis exemption	100.4, 100.5 OSA 6.2(2) Rule	93(1)(e) Act Recognition Order 62-904
None		100.6 OSA	93(1)(f) Act
4.6	Issuer acquisition or redemption exemption	101 OSA	93(3)(a), (b) and (c) Act
4.7	Employee, executive officer, director and consultant exemption	101.1 OSA	93(3)(d) Act
4.8(1)	Definition - Designated exchange	101.2(5) OSA	Recognition Order 21-901
4.8(2)		101.2(1) OSA	93(3)(e) Act 93(4) Act
4.8(3)		101.2(2) OSA	93(3)(f) Act
4.8(4)		101.2(3) OSA	None
4.8(5)		101.2(4) OSA 6.3 Rule	187 of Reg. 1015.
4.9	Non-reporting issuer exemption	101.3 OSA 6.1 Rule	93(3)(g) Act
4.10	Foreign issuer bid exemption	101.4, 101.6 OSA 6.2(1) Rule	None
4.11	De minimis exemption	101.5, 101.6 OSA 6.2(2) Rule	93(3)(h) Act Recognition Order 62-904
None		101.7 OSA	93(3)(i) Act
5.1	Definitions *"acquiror"*, *"acquiror's securities"*	102 OSA	89(1) Act *"offeror"*, *"offeror's securities"*
5.2(1)	Early Warning	102.1(1) OSA 7.1 Rule	101(1) Act
5.2(2)		102.1(2) OSA 7.1 Rule	101(2) Act
5.2(3)		102.1(3) OSA	101(3) Act
5.2(4)		102.1(4) OSA	101(4) Act
5.3(1)	Acquisitions during bid	102.2(1) OSA	102(1) Act
5.3(2)		102.2(2) OSA	102(2) Act
5.3(3)		7.2(1) Rule	198 Reg.
5.4	Duplicate news release not required	7.2(2) Rule	103 Act
5.5	Copies of news release and report	7.2(3) Rule	2.2 NI 62-103
None		103 OSA *"interested person"*	89(1) Act
6.1	Exemption – general	104(1), 104(2)(b), (c) OSA	104(1), 104(2)(b), (c) Act
6.2	Exemption – collateral benefit	104(2)(a) OSA	104(2)(a) Act
N/A		105 OSA	105 Act
7.1	Transition	105.1 OSA	N/A

APPENDIX B

PROPOSED OSC RULE 62-504
SUMMARY OF COMMENTS AND RESPONSES

Reference	Summarized Comment	Response
General	Although all commenters expressed support for CSA initiatives to harmonize securities laws requirements across Canada, each was disappointed that the regulation of take-over bids and issuer bids in Canada would not proceed by way of a single national instrument. All commenters urged the Government of Ontario to ensure the OSC has the necessary rule-making authority to adopt such a national instrument. One commenter confirmed its view that a single national regulatory body applying uniform securities legislation would be the most efficient system for regulating participants in the securities markets and protecting investors.	We thank the commenters for their letters.
Section 4.1	One commenter pointed out that neither the proposed amendments to Part XX of the *Securities Act* (Ontario) (the "Revised Part XX") or proposed Rule 62-504 *Take-Over Bids and Issuer Bids* (the "Proposed Rule") address the uncertainty regarding the extent to which connected transactions to a bid are considered to be collateral benefits. The commenter suggested that guidance be provided in a companion policy to the Proposed Rule to fill this vacuum in bid legislation.	We believe the concept of collateral agreement is broad enough to capture "connected transactions" to the extent that such transactions have the effect of providing "consideration of greater value" to a security holder under a bid. We believe interpretation of the phrase "consideration of greater value" is better addressed through the application of specific facts in case law.
Section 6.2 / Companion Policy	One commenter submitted that the requirement in respect of the foreign take-over/issuer bid exemptions to publish and file an advertisement containing a summary of the bid should be limited to circumstances where there is no foreign requirement to mail a bid to target security holders. The commenter argued that bidders for foreign targets should not be burdened with Ontario requirements that are more onerous than the applicable requirements in the target's home jurisdiction.	We generally agree with this comment and have amended the requirement to provide that an advertisement is only required where the bidder is not mailing materials to Ontario security holders and is otherwise publishing a notice or advertisement in respect of the bid in the target's home jurisdiction. However, in respect of the requirement to mail materials to Ontario security holders, we have determined that it is appropriate to require a summary of the bid in English to be included with the mailing if the bid materials are not in English. Given the bidder is already mailing materials, we do not view this added requirement as a hardship.
Companion Policy	One commenter noted that the concept of "acting jointly or in concert" in the current legislation lacks sufficient precision to enable a user to properly interpret the concept except in the clearest situations and that the Revised Part XX does not address this problem. The commenter suggested that interpretive guidance be provided in a companion policy to the Proposed Rule.	We believe that interpretation of the concept of "acting jointly or in concert" is, by definition, fact-specific and do not believe general guidance would be helpful.
Consequential	One commenter pointed out that the proposed	We agree with this comment and have amended

Reference	Summarized Comment	Response
Amendments / Section 9.5 of NI 62-103	definition of “early warning requirements” in NI 62-103 was overly broad. One commenter pointed out that the proposed definition of “offeror” is confusing because it refers to the definition in securities legislation and there are two definitions of the term offeror under the Revised Part XX.	the proposed definition. We agree with this comment and have amended the proposed definition. We note that this problem exists in the current version of NI 62-103.
Item 12 of Form 62-504F1	One commenter suggested that the requirement in Item 12(c) be deleted as it may be confusing to security holders and is unlikely to assist in determining whether to tender to the bid.	We agree with this comment and have deleted the requirement in Item 12(c).
Item 15 of Form 62-504F1	One commenter pointed out that clause (c) is unnecessary. Further, the same commenter suggested that clauses (d) and (e) should be specifically limited to collateral benefits and that clause (d) should be narrowed as it appears to require a determination of the exact value of the benefit.	We agree with this comment and have amended Item 15.
Item 18 of Form 62-504F1	One commenter suggested Item 18 should be aligned with the valuation disclosure requirements of OSC Rule 61-501. Specifically, Item 18 should not require a summary of the valuation if the valuation is included in its entirety in the bid circular.	We agree with this comment and have amended Item 18 to require disclosure regarding valuations as required by securities legislation.
Item 19 of Form 62-504F1	One commenter submitted that it should be stated in a companion policy that the Director will consider granting exemptive relief, on an expedited and confidential basis, to allow a bidder to exclude information in the bid circular that can only be derived from disclosure concerning the offeree issuer that the bidder does not reasonably have access.	We do not agree this statement is necessary. The disclosure required by Item 19 would not typically be derived from disclosure concerning the offeree issuer.
Item 23 of Form 62-504F1	One commenter is of the view that Item 23 should not require the circular to include other information that has already been publicly disclosed.	We generally agree with this comment and have decided to retain the language used in Item 19 of the current Form 32.

ONTARIO SECURITIES COMMISSION RULE 62-504
TAKE-OVER BIDS AND ISSUER BIDS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definition of "consultant" – (1) In this Rule and for the purposes of Part XX of the Act, "consultant" means, for an issuer, a person or company, other than an employee, executive officer, or director of the issuer or of a related entity of the issuer, that,

(a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,

(b) provides the services under a written contract with the issuer or a related entity of the issuer, and

(c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer,

(2) In this Rule and for the purposes of Part XX of the Act, "consultant" includes in the case of an individual consultant, a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner.

1.2 Definition of "standard trading unit" – In this Rule, "standard trading unit" means,

(a) 1,000 units of a security with a market price of less than $0.10 per unit,

(b) 500 units of a security with a market price of $0.10 or more per unit and less than $1.00 per unit, and

(c) 100 units of a security with a market price of $1.00 or more per unit.

1.3 Interpretation, market price – (1) In this Rule and for the purposes of Part XX of the Act

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

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

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

(i) the average of the closing bid and ask prices for each day on which there was no trading, and

(ii) either the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price, or the average of the highest and lowest prices of securities of that class for each day that there has been trading, if the published market provides only the highest and lowest prices of securities traded on a particular day.

(2) If there is more than one published market for a security, the market price in paragraphs (1)(a), (b) and (c) must be determined as follows:

(a) if only one of the published markets is in Canada, the market price must be determined solely by reference to that market;

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

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

(3) Despite subsections (1) and (2), for the purposes of section 100 of the Act, if an offeror acquires securities on a published market, the market price for those securities is the price of the last standard trading unit of securities of that class purchased, before the acquisition by the offeror, by a person or company who was not acting jointly or in concert with the offeror.

PART 2 EXCEPTIONS TO BID INTEGRATION RULES

2.1 Acquisitions during formal take-over bid – (1) Subsection 93.1(1) of the Act does not apply to acquisitions of securities of the class that are subject to a formal take-over bid and securities convertible into securities of that class beginning on the third business day following the date of the bid until the expiry of the bid if, in addition to satisfying any requirement under subsection 93.1(2) of the Act, all of the following conditions are satisfied:

(a) the intention of the offeror,

(i) on the date of the bid, is to make purchases and that intention is stated in the bid circular, or

(ii) to make purchases changes after the date of the bid and that intention is stated in a news release issued and filed at least one business day prior to making such purchases;

(b) the purchases are made in the normal course on a published market;

(c) the offeror issues and files a news release immediately after the close of business of the published market on each day on which securities have been purchased under this subsection disclosing the following information:

(i) the name of the purchaser;

(ii) if the purchaser is a person or company referred to in clause (b), (c) or (d) of the definition of “offeror” set out in section 93 of the Act, the relationship of the purchaser and the offeror;

(iii) the number of securities purchased on the day for which the news release is required;

(iv) the highest price paid for the securities on the day for which the news release is required;

(v) the aggregate number of securities purchased on the published market during the currency of the bid;

(vi) the average price paid for the securities that were purchased on the published market during the currency of the bid; and

(vii) the total number of securities owned by the purchaser after giving effect to the purchases that are the subject of the news release;

(d) no broker acting for the offeror performs services beyond the customary broker’s functions in regard to the purchases;

(e) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;

(f) the offeror or any person or company acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid; and

(g) the seller or any person or company acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(2) Subsection 93.1(1) of the Act does not apply to an agreement between a security holder and the offeror to the effect that the security holder will, in accordance with the terms and conditions of a formal take-over bid, deposit the security holder’s securities under the bid.

2.2 Acquisitions during formal issuer bid – Subsection 93.1(4) of the Act does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any securities of the class subject to the formal issuer bid in reliance on an exemption in section 101 of the Act.

2.3 Acquisitions before formal take-over bid – (1) Subsection 93.2(1) of the Act does not apply to purchases made by an offeror if, in addition to satisfying any requirement under subsection 93.2(2) of the Act, all of the following conditions are satisfied:

(a) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;

(b) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;

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

(d) the seller or any person or company acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(2) Subsection 93.2(1) of the Act does not apply to a transaction that occurred within 90 days preceding the formal take-over bid if either of the following conditions are satisfied:

(a) the transaction is a trade in a security of the issuer that had not been previously issued;

(b) the transaction is a trade by or on behalf of the issuer in a previously issued security of that issuer that had been redeemed or purchased by, or donated to, that issuer.

2.4 Acquisitions after formal bid – Subsection 93.3(1) of the Act does not apply to purchases made by an offeror in the normal course on a published market if all of the following conditions are satisfied:

(a) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;

(b) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;

(c) the offeror or any person or company acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid; and

(d) the seller or any person or company acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

2.5 Sales during formal bid – Subsection 93.4(1) of the Act does not apply to an offeror under a formal issuer bid in respect of the issue of securities pursuant to a dividend plan, dividend reinvestment plan, employee purchase plan or another similar plan.

PART 3 REQUIRED FORMS

3.1 Formal bid circular – A bid circular under subsection 94.2(1) of the Act must be in,

(a) Form 62-504F1 Take-Over Bid Circular, for a take-over bid; or

(b) Form 62-504F2 Issuer Bid Circular, for an issuer bid.

3.2 Directors' circular – A directors' circular under subsection 95(4) of the Act must be in Form 62-504F3 Directors' Circular.

3.3 Director's or officer's circular – A director's or officer's circular under subsection 96(3) of the Act must be in Form 62-504F4 Director's or Officer's Circular.

3.4 Notice of change or variation – The following must be in Form 62-504F5 Notice of Change or Notice of Variation:

(a) a notice of change in relation to a bid circular under subsection 94.3(4) of the Act;

(b) a notice of variation in relation to a formal bid under subsection 94.4(2) of the Act;

(c) a notice of change in relation to a directors' circular under subsection 95.1(2) of the Act; and

(d) a notice of change in relation to a director's or officer's circular under subsection 96(7) of the Act.

PART 4 OFFEROR'S OBLIGATIONS – EXCEPTIONS

4.1 Prohibition against collateral agreements – exception – (1) Subsection 97.1(1) of the Act does not apply to an employment compensation arrangement, severance arrangement or other employment benefit arrangement that provides,

(a) an enhancement of employee benefits resulting from participation by the security holder of the offeree issuer in a group plan, other than an incentive plan, for employees of a successor to the business of the offeree issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the offeree issuer who hold positions of a similar nature to the position held by the security holder, or

(b) a benefit not described in paragraph (a) that is received solely in connection with the security holder's services as an employee, director or consultant of the offeree issuer, of an affiliated entity of the offeree issuer, or of a successor to the business of the offeree issuer, if,

(i) at the time the bid is publicly announced, the security holder and its associates beneficially own or exercise control or direction over less than 1% of the outstanding securities of each class of securities of the offeree issuer subject to the bid, or

(ii) an independent committee of directors of the offeree issuer, acting in good faith, has determined that

(A) the value of the benefit, net of any offsetting costs to the security holder, is less than 5% of the amount referred to in paragraph (3)(a), or

(B) the security holder is providing at least equivalent value in exchange for the benefit.

(2) In order to rely on an exception under paragraph (1)(b) the following conditions must be satisfied:

(a) the benefit is not conferred for the purpose, in whole or in part, of increasing the amount of the consideration paid to the security holder for securities deposited under the bid or providing an incentive to deposit under the bid;

(b) the conferring of the benefit is not, by its terms, conditional on the security holder supporting the bid in any manner; and

(c) full particulars of the benefit are disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(3) In order to rely on an exception under subparagraph (1)(b)(ii) the following conditions must be satisfied:

(a) the security holder receiving the benefit has disclosed to the independent committee the amount of consideration that the security holder expects it will be beneficially entitled to receive under the terms of the bid in exchange for the securities beneficially owned by the security holder; and

(b) the determination of the independent committee under subparagraph (1)(b)(ii) is disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

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

4.2 Proportionate take up and payment – exceptions – (1) Subsection 97.2(1) of the Act does not apply so as to prohibit an offeror from acquiring securities under the terms of a formal issuer bid that, if not acquired, would constitute less than a standard trading unit for the security holder.

(2) Subsection 97.2(1) of the Act does not apply to securities deposited under the terms of a formal issuer bid by security holders who,

(a) are entitled to elect a minimum price per security, within a range of prices, at which they are willing to sell their securities under the bid, and

(b) elect a minimum price which is higher than the price that the offeror pays for securities under the bid.

PART 5 FILING OF DOCUMENTS

5.1 Filing of documents (1) An offeror making a formal take-over bid must file copies of the following documents, and any amendments to those documents:

(a) any agreement between the offeror and a security holder of the offeree issuer relating to the take-over bid, including any agreement to the effect that the security holder will deposit its securities to the take-over bid made by the offeror;

(b) any agreement between the offeror and directors or officers of an offeree issuer relating to the take-over bid;

(c) any agreement between the offeror and an offeree issuer relating to the take-over bid; and

(d) any other agreement of which the offeror is aware that could affect control of the offeree issuer, including any agreement with change of control provisions, any security holder agreement or any voting trust agreement, that the offeror has access to and can reasonably be regarded as material to a security holder in deciding whether to deposit securities under the bid.

(2) An offeree issuer whose securities are the subject of a formal take-over bid must file copies of any agreement of which the offeree issuer 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 offeree issuer has access to and can reasonably be regarded as material to a security holder in deciding whether to deposit securities under the bid.

(3) Documents required to be filed,

(a) under subsection (1) must be filed on the day the take-over bid circular is filed under section 94.2 of the Act, and

(b) under subsection (2) must be filed on the day that the directors' circular is filed under section 95.2 of the Act.

(4) If an agreement required to be filed under subsection (1) or (2) is entered into after a take-over bid circular referred to in subsection (1) or the directors' circular referred to in subsection (2) is filed, the agreement must be filed promptly but not later than 2 business days from the date that the agreement was entered into.

(5) If a document required to be filed under subsection (1) or (2) has already been filed in electronic format under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR), the requirement to file the document may be satisfied by filing a letter describing the document and stating the filing date and project number.

(6) A document dated before March 30, 2004 that is required to be filed under subsection (1) or (2) may be filed in paper format if it does not exist in an acceptable electronic format under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR).

(7) A provision in a document required to be filed under subsection (1) or (2) may be omitted or marked so as to be unreadable if,

(a) the filer has reasonable grounds to believe that disclosure of the provision would be seriously prejudicial to the interests of the filer or would violate confidentiality provisions,

(b) the provision does not contain information relating to the filer or its securities that would be necessary to understand the document, and

(c) in the copy of the document filed by the filer, the filer includes a brief description of the information that has been omitted or marked so as to be unreadable immediately after the provision that has been omitted or marked.

PART 6 FORMAL BID EXEMPTIONS

6.1 Non-reporting issuer exemption – A take-over bid described in section 100.2 of the Act, or an issuer bid described in section 101.3 of the Act, is exempt from the formal bid requirements if, in addition to satisfying the applicable requirements in those sections, both of the following conditions are satisfied:

(a) there is no published market for the securities that are the subject of the bid; and

(b) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who

(i) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or

(ii) were formerly in the employment of the offeree issuer or in the employment of an entity that was an affiliate of the offeree issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer.

6.2 Required disclosure, exempt take-over bid or exempt issuer bid – (1) A take-over bid described in section 100.3 of the Act, or an issuer bid described in section 101.4 of the Act, is exempt from the formal bid requirements if, in addition to satisfying the applicable requirements in those sections, the following conditions are satisfied:

(a) at the same time as material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid, the material is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in Ontario;

(b) if the bid materials referred to in paragraph (a) are not in English, a brief summary of the key terms of the bid prepared in English is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in Ontario at the same time as the bid materials are filed and sent; and

(c) if no material relating to the bid is sent by or on behalf of the offeror to security holders of the class that is subject to the bid but a notice or advertisement of the bid is published by or on behalf of the offeror in the jurisdiction where the offeree issuer is incorporated or organized, an advertisement of the bid specifying where and how security holders may obtain a copy of, or access to, the bid documents is filed and published in English in at least one major daily newspaper of general and regular paid circulation in Ontario.

(2) A take-over bid described in section 100.4 of the Act, or an issuer bid described in section 101.5 of the Act, is exempt from the formal bid requirements if, in addition to satisfying the applicable requirements in those sections, at the same time as material relating to the bid is sent by or on behalf of the offeror to the security holders of the class that is subject to the bid, the material is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in Ontario.

6.3 Normal course issuer bid exemptions – A news release required under subsection 101.2(4) of the Act must contain the following information:

(a) the class and number of securities or principal amount of debt securities sought;

(b) the dates, if known, on which the issuer bid will commence and expire;

(c) the value, in Canadian dollars, of the consideration offered per security;

(d) the manner in which the securities will be acquired; and

(e) the reasons for the issuer bid.

PART 7 EARLY WARNING SYSTEM

7.1 Early warning – An acquiror under subsections 102.1(1) or (2) of the Act shall,

(a) promptly issue and file a news release containing the information required by section 3.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*; and

(b) within 2 business days from the day of the acquisition, file a report containing the information required by section 3.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*.

7.2 Acquisitions during bid – (1) An acquiror who makes an acquisition described in subsections 102.2(1) or (2) of the Act must, before the opening of trading on the next business day, issue and file a news release containing the following information:

(a) the name of the acquiror;

(b) the number of securities of the offeree issuer that were beneficially acquired, or over which the power to exercise control or direction was acquired, in the transaction that gave rise to the requirement to issue the news release;

(c) the beneficial ownership of, and the control and direction over, any of the securities of the offeree issuer, by the acquiror and all persons and companies acting jointly or in concert with the acquiror, immediately after the acquisition described in paragraph (b);

(d) the number of securities of the offeree issuer that were beneficially acquired, or over which the power to exercise control or direction was acquired, by the acquiror and all persons and companies acting jointly or in concert with the acquiror, since the commencement of the bid;

(e) the name of the market in which the acquisition described in paragraph (b) took place; and

(f) the purpose of the acquiror and all persons and companies acting jointly or in concert with the acquiror in making the acquisition described in paragraph (b), including any intention of the acquiror and all persons and companies acting jointly or in concert with the acquiror to increase the beneficial ownership of, or control or direction over, any of the securities of the offeree issuer.

(2) If the facts in respect of which a news release is required to be filed under sections 102.1 and 102.2 of the Act are identical, a news release is required only under the provision requiring the earlier news release.

(3) An acquiror that files a news release or report under sections 102.1 or 102.2 of the Act must promptly send a copy of each filing to the reporting issuer.

PART 8 EXEMPTIONS

8.1 General – The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 9 CONSEQUENTIAL AMENDMENTS AND REVOCATIONS

9.1 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.

9.2 Rule 62-503 – Rule 62-503 *Financing of Take-Over Bids and Issuer Bids* is revoked.

9.3 Recognition Order 62-904 – Recognition Order 62-904 *In the Matter of the Recognition of Certain Jurisdictions* is revoked.

9.4 Rule 13-502 – (1) Item 1, Part G of Appendix C to Rule 13-502 *Fees* is amended by replacing "100(3) or (7)" with "94.2(2), (3) or (4)".

(2) Item 2, Part G of Appendix C to Rule 13-502 *Fees* is amended by replacing "subsection 100(4)" with "section 94.5".

9.5 NI 62-103 – National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* is amended as follows:

(a) in section 1.1(1),

(i) add the following after the definition of "applicable provisions":

"associate" has the meaning ascribed to that term in section 1.1 of MI 62-104 and, in Ontario, has the meaning ascribed under paragraphs (a.1) to (f) of the definition of "associate" in subsection 1(1) of the *Securities Act* (Ontario);

(ii) repeal the definition of "early warning requirements" and substitute the following:

"early warning requirements" means the requirements set out in subsections 5.2(1) and 5.2(2) of MI 62-104 and, in Ontario, subsections 102.1(1) and 102.1(2) of the *Securities Act* (Ontario);

(iii) repeal the definition of "formal bid" and substitute the following:

"formal bid"

(a) means a take-over bid or issuer bid made in accordance with Part 2 of MI 62-104, and

(b) in Ontario, has the meaning ascribed to that term in subsection 89(1) of the *Securities Act* (Ontario);

(iv) add the following before the definition of "moratorium provisions":

"MI 62-104" means Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*;

(v) repeal the definition of "moratorium provisions" and substitute the following:

"moratorium provisions" means the provisions set out in subsection 5.2(3) of MI 62-104 and, in Ontario, subsection 102.1(3) of the *Securities Act* (Ontario);

(vi) repeal the definition of "offeror" and substitute the following:

"offeror" has the meaning ascribed to that term in section 1.1 of MI 62-104 and, in Ontario, subsection 89(1) of the *Securities Act* (Ontario);

(vii) repeal the definition of "offeror's securities" and substitute the following:

"offeror's securities" has the meaning ascribed to that term in section 1.1 of MI 62-104 and, in Ontario, subsection 89(1) of the *Securities Act* (Ontario);

(viii) repeal the definition of "private mutual fund" and substitute:

"private mutual fund" means

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

(b) a private investment fund referred to in section 2.21 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

(b) in subsection 2.1(1), strike "section 2.1 of National Instrument 62-102 *Disclosure of Outstanding Share Data* or";

(c) repeal subsection 5.1(b) and substitute the following:

(b) the business unit is not a joint actor with any other business unit with respect to the securities, determined without regard to the provisions of securities legislation that deem an affiliate, and presume an associate, to be acting jointly or in concert with an offeror;

(d) repeal Appendix B;

(e) repeal Appendix C;

(f) repeal Appendix D and substitute the following:

NATIONAL INSTRUMENT 62-103

APPENDIX D

BENEFICIAL OWNERSHIP

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Sections 5 and 6 of the *Securities Act* (Alberta) and sections 1.8 and 1.9 of MI 62-104
BRITISH COLUMBIA	Subsection 1(4) of the *Securities Act* (British Columbia) and sections 1.8 and 1.9 of MI 62-104
MANITOBA	Subsections 1(6) and 1(7) of the *Securities Act* (Manitoba) and sections 1.8 and 1.9 of MI 62-104
NEW BRUNSWICK	Subsections 1(5) and 1(6) of the *Securities Act* (New Brunswick) and sections 1.8 and 1.9 of MI 62-104
NEWFOUNDLAND AND LABRADOR	Subsections 2(5) and 2(6) of the *Securities Act* (Newfoundland and Labrador) and sections 1.8 and 1.9 of MI 62-104
NORTHWEST TERRITORIES	Sections 1.8 and 1.9 of MI 62-104
NOVA SCOTIA	Subsections 2(5) and 2(6) of the *Securities Act* (Nova Scotia) and sections 1.8 and 1.9 of MI 62-104
NUNAVUT	Sections 1.8 and 1.9 of MI 62-104
ONTARIO	Subsections 1(5) and 1(6) and sections 90 and 91 of the *Securities Act* (Ontario)
PRINCE EDWARD ISLAND	Sections 1.8 and 1.9 of MI 62-104
QUEBEC	Sections 1.8 and 1.9 of MI 62-104
SASKATCHEWAN	Subsections 2(5) and 2(6) of *The Securities Act*, *1988* (Saskatchewan) and sections 1.8 and 1.9 of MI 62-104
YUKON TERRITORY	Sections 1.8 and 1.9 of MI 62-104

(g) in Appendix E,

(i) add the following after paragraph (e):

(e.1) the value, in Canadian dollars, of any consideration offered per security if the offeror acquired ownership of a security in the transaction or occurrence giving rise to the obligation to file a news release;

(ii) in paragraph (i), add ", in Canadian dollars" after "value" and strike "and" at the end of the paragraph;

(iii) strike out "." at the end of paragraph (j) and substitute "; and" and add the following after paragraph (j):

(k) if applicable, a description of the exemption from securities legislation being relied on by the offeror and the facts supporting that reliance.

9.6 Rule 71-801 – Part 3 of Rule 71-801 *Implementing the Multijurisdictional Disclosure System* is repealed and the following is substituted:

PART 3 – BIDS FOR SECURITIES OF U.S. ISSUERS

3.1 Application of the Act to formal bids (1) The following do not apply to a formal bid made in compliance with Part 12 of NI 71-101 and otherwise in accordance with the Act:

(a) sections 93, 93.1, 93.3 and 93.4, clause 94(b), subsections 94.2(2), (3) and (4), subsections 94.4(3), (4) and (5), section 94.5 to 94.8, and 97 to 98.6 of the Act; and

(b) section 93.2 of the Act unless 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 subsections 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;

(2) The following apply to a formal bid made in compliance with Part 12 of NI 71-101 and otherwise in accordance with the Act:

(a) clause 94(a), section 94.1, subsections 94.2(1), 94.3 (2), (3), and (4), and subsection 94.4(2) of the Act;

(b) section 94.3(1) of the Act, except the requirement to send a notice of change to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario; and

(c) section 94.4(1) of the Act, except the requirement to send a notice of variation to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario.

3.2 Application of the Act to MJDS directors' circulars and MJDS individual director's or officer's circulars (1) Subsections 95(2), and (3), sections 95.1 and 95.2, subsection 96(6) and section 96.1 and 96.2 of the Act 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 the Act otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a formal take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101.

(2) The following 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 the Act otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a formal take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101:

(a) subsections 95(1) and 96(1) of the Act, except the requirement to send a directors' circular or an individual director's or officer's circular to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario;

(b) subsections 95.1(1) and 96(2) of the Act, except the requirement to send notice of change to holders of securities that, before the expiry of the bid, are convertible into securities of the class that is subject to the bid who are in Ontario;

(c) subsections 96(4) and (5) of the Act, except the requirement to send a copy of an individual director's or officer's circular and a notice of change to holders of securities that, before the expiry of the bid, are convertible into securities of the class that is subject to the bid who are in Ontario; and

(d) subsections 95(4), 95.1(2), 96(3) and (7) of the Act.

PART 10 TRANSITION AND COMING INTO FORCE

10.1 Transition – The take-over bid and issuer bid provisions in securities legislation that were in force immediately before the effective date of this Rule, continue to apply in respect of every take-over bid and issuer bid commenced before the effective date of this Rule.

Effective date – This Rule comes into force on February 1, 2008.

FORM 62-504F1
TAKE-OVER BID CIRCULAR

Part 1 General Provisions

(a) 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.

(b) 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.

(c) Numbering and headings

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

Part 2 Contents of 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 or company 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 or companies 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 and companies 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 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 97.1 of the Act, 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 4.1(1)(b)(ii) of the Rule, 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 4.1(1)(b)(ii)(A) or (B) of the Rule.

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 the 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 or company 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.

FORM 62-504F2
ISSUER BID CIRCULAR

Part 1 General Provisions

(a) 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 21 to be included in your issuer bid circular by reference to another document. Clearly identify the referenced document or any excerpt of it that you incorporate into your issuer bid circular. Unless you have already filed the referenced document, you must file it with your issuer bid circular. You must also disclose that the document is on SEDAR at www.sedar.com and that, on request, you will promptly provide a copy of the document free of charge to a security holder of the issuer.

(b) Plain language

Write the issuer bid circular so that readers are able to understand it and make informed investment decisions. Issuers should apply plain language principles when they prepare an issuer 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.

(c) Numbering and headings

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

Part 2 Contents of Issuer Bid Circular

Item 1. Name of issuer

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

Item 2. Securities subject to the bid

State the class and number of securities that are the subject of the issuer bid and a description of the rights of the holders of any other class of securities that have a right to participate in the offer. Where the number of securities sought under the bid is subject to additional purchases by the issuer for the purpose of preventing security holders from being left with less than a standard trading unit, disclose this fact.

Where the issuer intends to rely on the exception from the proportionate take up and payment requirements found in subsection 4.2(2) of the Rule relating to "dutch auctions", the issuer is not required to disclose the number of securities that are the subject of the issuer bid if the issuer discloses a maximum amount the issuer intends to spend making purchases pursuant to the bid.

Item 3. Time period

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

Item 4. Consideration

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

Item 5. Payment for deposited securities

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

Item 6. Right to withdraw deposited securities

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

Item 7. Source of funds

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

(a) the name of the lender,

(b) the terms and financing conditions of the loan,

(c) the circumstances under which the loan must be repaid, and

(d) the proposed method of repayment.

Item 8. Participation

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

If an issuer intends to rely on one or both of the exceptions from the proportionate take up and payment requirements found in subsections 4.2(1) and (2) of the Rule relating to standard trading units and "dutch auctions", describe the mechanism under which securities would be deposited and taken up without proration.

Item 9. Purpose of the bid

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

Item 10. Trading in securities to be acquired

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 issuer bid,

(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 issuer bid, or, in the case of debt securities, the prices quoted on each principal market, and

(d) the date that the issuer bid to which the circular relates was announced to the public and the market price of the securities of the issuer immediately before that announcement.

Item 11. Ownership of securities of issuer

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

(a) by each director and officer of the issuer and

(b) if known after reasonable enquiry, by

(i) each associate or affiliate of an insider of the issuer,

(ii) each associate or affiliate of the issuer,

(iii) an insider of the offeror, other than a director or officer of the issuer, and

(iv) each person or company acting jointly or in concert with the issuer.

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

Item 12. Commitments to acquire securities of issuer

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

Item 13. Acceptance of issuer bid

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

Item 14. Benefits from the bid

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

Item 15. Material changes in the affairs of issuer

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

Item 16. Other benefits

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

Item 17. Arrangements between the issuer and security holders

(1) Disclose the particulars of any agreement, commitment or understanding made or proposed to be made between the issuer and a security holder of the 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 an issuer bid, must include

(a) a detailed explanation as to how the issuer determined entering into it was not prohibited by section 97.1 of the Act, or

(b) disclosure of the exception to, or exemption from, the prohibition against collateral agreements relied on by the issuer and the facts supporting that reliance.

(2) If the issuer is relying on an exception to the prohibition against collateral agreements under subparagraph 4.1(1)(b)(ii) of the Rule, and if the information is available to the issuer, 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 4.1(1)(b)(ii)(A) or (B) of the Rule.

Item 18. Previous purchases and sales

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

(a) the description of the security,

(b) the number of securities purchased or sold,

(c) the purchase or sale price of the security, and

(d) the date and purpose of each transaction.

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

Item 19. Financial statements

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

Item 20. Valuation

If a valuation is required by applicable securities legislation, include the disclosure regarding valuations required by securities legislation.

Item 21. Securities of issuer to be exchanged for others

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

Item 22. Approval of issuer bid circular

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

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

Item 23. Previous distribution

If the securities of the class subject to the issuer bid were distributed during the 5 years preceding the issuer bid, state the distribution price per share and the aggregate proceeds received by the issuer or selling security holder.

Item 24. Dividend policy

State the frequency and amount of dividends with respect to shares of the issuer during the 2 years preceding the date of the issuer bid, any restrictions on the issuer's ability to pay dividends and any plan or intention to declare a dividend or to alter the dividend policy of the issuer.

Item 25. Tax consequences

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

Item 26. Expenses of bid

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

Item 27. Right of appraisal and acquisition

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

Item 28. 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 29. Other material facts

Describe

(a) any material facts concerning the securities of the issuer, and

(b) any other matter not disclosed in the issuer bid circular that has not previously been generally disclosed, is known to the issuer, and that would reasonably be expected to affect the decision of the security holders of the issuer to accept or reject the offer.

Item 30. Solicitations

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

Item 31. Certificate

An issuer 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 32. Date of issuer bid circular

Specify the date of the issuer bid circular.

FORM 62-504F3
DIRECTORS' CIRCULAR

Part 1 General Provisions

(a) Plain language

Write the directors' circular so that readers are able to understand it and make informed investment decisions. Directors should apply plain language principles when they prepare a directors' 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.

(b) Numbering and headings

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

Part 2 Contents of Directors' Circular

Item 1. Name of offeror

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

Item 2. Name of offeree issuer

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

Item 3. Names of directors of the offeree issuer

State the name of each director of the offeree issuer.

Item 4. Ownership of securities of offeree issuer

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

(a) by each director and officer of the offeree issuer, and

(b) if known after reasonable enquiry, by

(i) each associate or affiliate of an insider of the offeree issuer,

(ii) each associate or affiliate of the offeree issuer,

(iii) an insider of the offeree issuer, other than a director or officer of the offeree issuer, and

(iv) each person or company acting jointly or in concert with the offeree issuer.

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

Item 5. Acceptance of take-over bid

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

Item 6. Ownership of securities of offeror

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

(a) by the offeree issuer,

(b) by each director and officer of the offeree issuer, and

(c) if known after reasonable enquiry, by

(i) each associate or affiliate of an insider of the offeree issuer,

(ii) each affiliate or associate of the offeree issuer, and

(iii) an insider of the offeree issuer, other than a director or officer of the offeree issuer, and

(iv) each person or company acting jointly or in concert with the offeree issuer.

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

Item 7. Relationship between the offeror and the directors and officers of the 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. State also whether any directors or officers of the offeree issuer are also directors or officers of the offeror or any subsidiary of the offeror and identify those persons.

Item 8. Arrangements between offeree issuer and officers and directors

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

Item 9. Arrangements between the offeror and security holders of offeree issuer

(1) If not already disclosed in the take-over bid circular, 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 97.1 of the Act, 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 4.1(1)(b)(ii) of the Rule and if not already disclosed in the take-over bid circular, 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 4.1(1)(b)(ii)(A) or (B) of the Rule.

Item 10. Interests of directors and officers of the offeree issuer in material transactions with offeror

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

Item 11. Trading by directors, officers and other insiders

(1) State the number of securities of the offeree issuer traded, the purchase or sale price and the date of each transaction during the 6-month period preceding the date of the directors' circular by the offeree issuer and each director, officer or other insider of the offeree issuer, and, if known after reasonable enquiry, by

(a) each associate or affiliate of an insider of the offeree issuer,

(b) each affiliate or associate of the offeree issuer, and

(c) each person or company acting jointly or in concert with the offeree issuer.

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

Item 12. Additional information

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

Item 13. Material changes in the affairs of offeree issuer

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

Item 14. Other material information

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

Item 15. Recommending acceptance or rejection of the bid

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

Item 16. Response of offeree issuer

Describe any transaction, directors' resolution, agreement in principle or signed contract of the offeree issuer in response to the bid. Disclose whether there are any negotiations underway in response to the bid, which relate to or would result in

(a) an extraordinary transaction such as a merger or reorganization involving the offeree issuer or a subsidiary,

(b) the purchase, sale or transfer of a material amount of assets by the offeree issuer or a subsidiary,

(c) a competing take-over bid,

(d) a bid by the offeree issuer for its own securities or for those of another issuer, or

(e) any material change in the present capitalization or dividend policy of the offeree issuer.

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

Item 17. Approval of directors' circular

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

Item 18. 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 19. Certificate

A directors' 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 20. Date of directors' circular

Specify the date of the directors' circular.

FORM 62-504F4
DIRECTOR'S OR OFFICER'S CIRCULAR

Part 1 General Provisions

(a) Plain language

Write the director's or officer's circular so that readers are able to understand it and make informed investment decisions. Directors and officers should apply plain language principles when they prepare a director's or officer's 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.

(b) Numbering and headings

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

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

Item 1. Name of offeror

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

Item 2. Name of offeree issuer

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

Item 3. Name of director or officer of offeree issuer

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

Item 4. Ownership of securities of offeree issuer

State the number, designation and percentage of 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 director or officer, and

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

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

Item 5. Acceptance of bid

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

Item 6. Ownership of securities of offeror

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

(a) by the director or officer, or

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

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

Item 7. Arrangements between offeror and director or officer

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

Item 8. Arrangements between offeree issuer and director or officer

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

Item 9. Interests of director or officer in material transactions with offeror

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

Item 10. Additional information

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

Item 11. Material changes in the affairs of offeree issuer

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

Item 12. Other material information

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

Item 13. Recommendation

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

Item 14. Statement of rights

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

> *Securities legislation of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revison 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 15. Certificate

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

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

Item 16. Date of director's or officer's circular

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

FORM 62-504F5
NOTICE OF CHANGE OR NOTICE OF VARIATION

Part 1 General Provisions

(a) Plain language

Write the notice of change or notice of variation so that readers are able to understand it and make informed investment decisions. Plain language principles should be applied when preparing a notice of change or notice of variation 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.

(b) Numbering and headings

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

Part 2 Contents of Notice of Change or Notice of Variation

Item 1. Name of offeror

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

Item 2. Name of offeree issuer (if applicable)

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. Particulars of notice of change or notice of variation

(1) A notice of change required under section 94.3 of the Act must contain

(a) a description of the change in the information contained in

(i) the take-over bid circular or issuer bid circular, and

(ii) any notice of change previously delivered under section 94.3,

(b) the date of the change,

(c) the date up to which securities may be deposited,

(d) the date by which securities deposited must be taken up by the offeror, and

(e) a description of the rights of withdrawal that are available to security holders.

(2) A notice of variation required under section 94.4 of the Act must contain

(a) a description of the variation in the terms of the take-over bid or issuer bid,

(b) the date of the variation,

(c) the date up to which securities may be deposited,

(d) the date by which securities deposited must be taken up by the offeror,

(e) if the date referred to in paragraph (d) is not known, a description of the legal requirements regarding the timing of take up of securities deposited under the bid,

(f) a description of when payment will be made for deposited securities in relation to the time in which they are taken up by the offeror, and

(g) a description of the rights of withdrawal that are available to security holders.

(3) A notice of change required under section 95.1 or subsection 96(2) of the Act must contain, as applicable, a description of the change in the information contained in

(a) the directors' circular,

(b) any notice of change previously delivered under section 95.1,

(c) the director's or officer's circular, or

(d) any notice of change previously delivered under subsection 96(2).

Item 4. Statement of rights

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

Securities legislation of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, one or more rights of rescission, price revision or to damages if there is a misrepresentation in a circular or notice that is required to be delivered to 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 5. Certificate

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

Item 6. Date of notice of change or notice of variation

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

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CANADIAN SECURITIES ADMINISTRATORS
NOTICE

NATIONAL POLICY 62-203
TAKE-OVER BIDS AND ISSUER BIDS

Introduction

We, the Canadian Securities Administrators, have developed Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) and related forms to harmonize and consolidate take-over bid and issuer bid regimes nationally. In Ontario, the government is seeking to achieve the same harmonization and modernization effect through proposed amendments to Part XX - Take-Over Bids and Issuer Bids of the *Securities Act* (Ontario) (Part XX) and by adoption of Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (Rule 62-504).

National Policy 62-203 *Take-Over Bids and Issuer Bids* (the Policy) contains explanations and discussions of MI 62-104, Part XX, and Rule 62-504 (together, the Bid Regime). We expect the Policy will be adopted in all jurisdictions.

Provided all necessary ministerial approvals are obtained, the Bid Regime and the Policy will come into effect on February 1, 2008. Concurrent with the adoption of the Policy, we intend to revoke National Policy 62-201 *Bids Made Only in Certain Jurisdictions*, and withdraw CSA Staff Notice 62-303 *Identifying the Offeror in a Take-over Bid*, the substance of which will largely be found in the Policy.

Substance and Purpose

This Policy outlines how the provincial and territorial securities regulatory authorities interpret or apply certain provisions of the Bid Regime and provides guidance on the conduct of parties involved in a bid.

Summary of the Policy

The Policy provides guidance concerning:

(i) varying terms after a bid has been commenced,

(ii) interpretation of the prohibition against collateral agreements,

(iii) independent committees for the purposes of the collateral agreement exceptions,

(iv) independent committee's determination of equivalent value, and

(v) redacting or omitting filed information.

Attached as Appendix A is a summary of the written comments received on the proposed Companion Policy published for comment on April 28, 2006, and our responses.

Questions

Please refer your questions to any of:

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December 14, 2007

Appendix A
Proposed Companion Policy 62-104CP
Summary of Comments and Responses

Reference	Summarized Comment	Response
s. 2.1	One commenter disliked the general approach of s. 2.1 because it uses "vague hortatory language" and broad principles only. Two commenters objected to the phrase "or exert pressure on" in the third bullet.	We believe it is helpful to state the objectives of the Bid Regime. We have amended the language in the third bullet to delete the reference to "exert pressure".
s. 2.2	One commenter suggested that there is no policy rationale for a parent company (referred to as a *primary party* in s. 2.2) to be considered a joint offeror in a cash bid and have to certify the bid circular.	We disagree with this comment. We believe it is appropriate that the parent company certify the bid circular in all cases.
s. 2.3	One commenter suggested the definition of independent committee be moved from the policy into the legislation. Another commenter warned that the term is capable of being interpreted over-broadly.	We have amended the policy to make it clear that the question of whether a director is independent will depend on the circumstances of the bid. We have also provided a cross-reference to the definitions of "independent director" and "independent committee" in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.
	One commenter suggested the policy should address the possibility of a collateral agreement arising in the context of an unsolicited bid, in which case the independent committee process may be unavailable.	We disagree any specific guidance is necessary. In the event of a collateral agreement arising in the context of an unsolicited bid, the bidder will have to apply for exemptive relief.
s. 2.7	One commenter questioned whether the steps in s. 2.7 will allow an offeror to determine the number of outstanding voting securities owned by residents of Canada in a manner that produces consistent results without significant expense.	We have removed the guidance on "determination of shareholdings" because we are of the view that it is up to a bidder to determine whether it has taken all necessary steps to come within the relevant exemption.
s. 2.9	One commenter noted that the Universal Market Integrity Rules (UMIR) have adopted *standard trading unit* to replace *board lot* and recommends that the CSA use *standard trading unit*, as defined in the UMIR, in s. 2.9.	We agree with the comment and have made this change.
s. 2.10	Two commenters suggested that the words "under an exempt offering" should be deleted because purchases from treasury under a prospectus can trigger an early warning reporting obligation.	We agree with the comment and have made the suggested change.

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NATIONAL POLICY 62-203
TAKE-OVER BIDS AND ISSUER BIDS

PART 1 INTRODUCTION AND PURPOSE

1.1 **Introduction** – Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) governs take-over bids and issuer bids in all jurisdictions of Canada, except Ontario, and has been implemented as a rule or regulation in all jurisdictions, except Ontario. Part XX of the *Securities Act* (Ontario) (the Ontario Act) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (the Ontario Rule) govern take-over bids and issuer bids in Ontario only. This Policy, the Instrument, the Ontario Act and the Ontario Rule are collectively referred to as the "Bid Regime". This Policy outlines how the provincial and territorial securities regulatory authorities interpret or apply certain provisions of the Bid Regime and provides guidance on the conduct of parties involved in a bid.

PART 2 BID REGIME FOR TAKE-OVER BIDS AND ISSUER BIDS IN CANADA

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

- equal treatment of offeree issuer security holders,
- provision of adequate information to offeree issuer security holders, and
- an open and even-handed bid process.

2.2 **Identifying the offeror** – More than one person may constitute an offeror under a take-over bid. This can arise if an offer is made indirectly, because the terms "offer to acquire" in section 1.1 of the Instrument and subsection 89(1) of the Ontario Act and "take-over bid" in section 1.1 of the Instrument and subsection 89(1) of the Ontario Act apply to both direct and indirect offers to acquire securities.

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

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

- Did the primary party play a significant role in initiating, structuring and negotiating the bid?
- Does the primary party control any of the terms of the offer?
- Is the primary party financing the bid, guaranteeing the financing, or integral to obtaining the financing?
- Does the primary party directly or indirectly control the named offeror?
- Did the primary party form, or cause to be formed, the named offeror?
- Are the primary party's securities being offered as consideration under the bid?
- Will the primary party beneficially own the assets or securities of the target after completion of the bid?

We think a "yes" answer to any of these questions could mean that the primary party is making an indirect offer and is a joint offeror under the bid.

2.3 **Bids made only in certain jurisdictions** – The failure to make a bid to security holders of an offeree issuer in one or more jurisdictions if the bid is made to security holders in other jurisdictions is not consistent with the existing framework of securities regulation in Canada, which aims to ensure that all security holders of the offeree issuer in Canada are treated equally. If the bid is not made in all jurisdictions, securities regulatory authorities in the jurisdictions in which the bid is made may issue cease trade orders in respect of the bid.

2.4 **Varying terms** – If an offeror varies the terms of its bid after the bid has been commenced, the variation may have the effect of making the bid less favourable to offeree security holders in circumstances where the offeror

(a) lowers the consideration offered under the bid,

(b) changes the form of consideration offered under the bid, other than to add to the consideration already offered under the bid,

(c) lowers the proportion of outstanding securities for which the bid is made, or

(d) adds new conditions.

Depending on the circumstances, these variations may be so fundamental to the bid that we may exercise our public interest mandate to ensure that offeree security holders are not prejudiced by the variations. We may intervene to cease trade the bid, require that the deposit period be extended for a period longer than mandated under the Bid Regime or require that an offeror commence a new bid with the varied conditions.

2.5 Interpretation of prohibition against collateral agreements – An offeror or anyone acting jointly or in concert with an offeror is prohibited from entering into a collateral agreement, understanding or commitment that has the effect of providing a security holder of the offeree issuer with consideration of greater value than that offered to other security holders of the same class. This prohibition applies to a direct or indirect benefit being provided to a security holder and includes participation by the holder in another transaction with the offeror that has the effect of providing consideration of greater value to the holder than that offered to other security holders of the same class.

2.6 Independent committees for the collateral agreement exceptions – The Bid Regime excludes employment-related arrangements from the scope of the collateral agreement prohibition if, among other conditions, an independent committee of the offeree issuer has determined that the value of the benefit received by a security holder is less than 5% of the total consideration to be received by the holder under the bid or that a security holder is providing at least equivalent value in exchange for the benefit. For the purposes of these exceptions, we consider a director to be independent if the director is disinterested in the bid or any related transactions. Although this is a factual determination based on the particular circumstances of the bid, we think that the definitions of independent director and independent committee in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* provide relevant guidance on determining director independence.

2.7 Equivalent value exception – In determining that a security holder is providing at least equivalent value in exchange for a benefit under clause 2.25(1)(b)(ii)(B) of the Instrument or clause 4.1(1)(b)(ii)(B) of the Ontario Rule, an independent committee should consider, among other things, whether the employment compensation arrangement, severance arrangement or other employment benefit arrangement is on terms consistent with arrangements made with individuals holding comparable positions (i) with the offeror and (ii) in the industry generally. Where an independent committee does not have the expertise or resources to ascertain whether an arrangement is on terms consistent with industry standards, we recommend the committee retain an appropriately qualified independent expert to advise it concerning industry standards.

2.8 Redacting or omitting filed information – The Bid Regime requires the offeror and offeree issuer to file prescribed documents relating to control of the offeree issuer and to the bid. The filer is permitted, under certain conditions, to omit or mark provisions of a filed document so as to make the provisions unreadable. However, we do not think it appropriate for a filer to omit or redact an entire document on the basis that the information in the document is subject to confidentiality.

2.9 Section 1.2 of the Instrument – Saskatchewan is not included in subsection 1.2(1) of the Instrument because the definitions of “offer to acquire” and “offeror” are in the regulations to *The Securities Act, 1988* (Saskatchewan). The definitions are the same.

CANADIAN SECURITIES ADMINISTRATORS
NOTICE OF PUBLICATION

MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS
AND COMPANION POLICY 61-101CP TO MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

Introduction

We, the *Autorité des marchés financiers* (AMF) and the Ontario Securities Commission (OSC), are publishing Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (the Instrument), which introduces harmonized requirements in Québec and Ontario for enhanced disclosure, independent valuations and majority of minority security holder approval for specified types of transactions. These requirements are substantially similar to those currently set out in Regulation Q-27 *Respecting Protection of Minority Securityholders in the Course of Certain Transactions* (Regulation Q-27) in Québec and in Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* (Rule 61-501) in Ontario.

Companion Policy 61-101CP *Protection of Minority Security Holders in Special Transactions* (the Companion Policy) provides guidance on how the AMF and the OSC will interpret and apply the Instrument.

We are also publishing a summary of comments we received on the proposed amendments to the Instrument we published for comment on August 25, 2006, together with our response. We would like to thank all of the commenters for the time they took to provide us with their comments.

The following notices will be withdrawn upon the coming into force of the Instrument as they will no longer be relevant:

- OSC Staff Notice 61-701 – *Applications for Exemptive Relief under Rule 61-501*
- Notice of the AMF – *Protection of Security Holders in the Course of Certain Transactions – Situation in Québec and Ontario – Exemptive Relief*

The text of the Instrument and Companion Policy will be available on the websites of the AMF and the OSC:

www.lautorite.qc.ca
www.osc.gov.on.ca

In Québec, the Instrument is a regulation made under section 331.1 of the *Securities Act* (Québec) (the QSA) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

In Ontario, the Instrument was delivered to the Minister of Finance (the Minister) on December 6, 2007. The OSC has requested expedited review of the Instrument by the Minister. If the Minister approves the Instrument by January 17, 2008, the Instrument will come into force on February 1, 2008. If the Minister does not approve or reject the Instrument or return it for further consideration, it will come into force on February 19, 2008.

Provided all necessary ministerial approvals are obtained, the Companion Policy will come into force on the day that the Instrument comes into force.

Background

When the OSC amended Rule 61-501 in 2004, the AMF indicated its intention to harmonize Rule 61-501 and Regulation Q-27 by making similar amendments to Regulation Q-27. The Instrument and the related repeal of Rule 61-501 and Regulation Q-27 will achieve this objective.

As part of the Canadian Securities Administrators (the CSA) initiative to harmonize and streamline securities law in Canada, the CSA published for comment National Instrument 62-104 *Take-Over Bids and Issuer Bids* (Proposed National Rule). Those CSA jurisdictions that currently regulate bids recommended to their respective governments legislative amendments and rule-making authority that would remove detailed bid provisions from statutes and substitute general "platform" provisions to enable regulators to harmonize, streamline and update bid requirements in the National Rule. In Quebec, the Minister of Finance of Québec introduced before the National Assembly Bill 29, *An Act to amend the Securities Act and Other Legislative Provisions*. In Ontario, the Government of Ontario is seeking to achieve the same harmonization and modernization effect through proposed amendments to Part XX – Take-Over Bids and Issuer Bids of the *Securities Act* (the OSA) introduced in Schedule 38 to Bill 187

Budget Measures and Interim Appropriation Act, 2007 and proposed OSC Rule 62-504 *Take-Over Bids and Issuer Bids* (Proposed OSC Rule 62-504). The Proposed National Rule will be implemented as Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (Proposed MI 62-104) in jurisdictions other than Ontario.

A number of the changes proposed in the Instrument are consequential changes as a result of the proposed amendments to the QSA and OSA, Proposed MI 62-104 and Proposed OSC Rule 62-504. The effective date of the Instrument will be February 1, 2008, which will coincide with the coming into force of the amendments to the QSA and OSA described above and, subject to all necessary regulatory and ministerial approvals, with the adoption and coming into force of the Proposed MI 62-104 and Proposed OSC Rule 62-504.

Purpose and Benefits

The Instrument is primarily designed to consolidate and harmonize the requirements of Québec and Ontario governing insider bids, issuer bids, business combinations and related party transactions in a single multilateral instrument.

Summary of Amendments to the Instrument

The following are the most significant amendments to the Instrument and Companion Policy.

Part 1 Definitions and Interpretation

We removed the definition of "beneficially owns" and replaced it with interpretation section 1.6 as is the case in the QSA and OSA (collectively being referred to as the Acts) and Proposed MI 62-104. We also revised the interpretation to take into account comments received.

We removed the definition of "controlled". We added interpretation of the concept of control for the purposes of the definition of subsidiary entity in section 1.7 and harmonized it with the concept of control used in the OSA and in Proposed MI 62-104.

We have not amended the definition of "related party transaction". We are now of the view that an extensive analysis should be done before we propose any change to the definition.

Part 4 Business Combinations

We clarified the requirement set out in section 4.2(3)(h) of the Instrument to provide the disclosure in the information circular of the identity of the holders of securities specified in paragraph (g) together with their individual holdings. The same applies to similar disclosure provisions throughout the Instrument.

We amended the valuation exemption in section 4.4(1)(a) to provide that listing on the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc does not make the exemption unavailable. The same applies to similar exemptions throughout the Instrument.

Part 5 Related Party Transactions

The valuation exemption entitled, "Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority", will be available in the context of a business combination and a related party transaction.

Part 7 Independent Directors

We amended section 7.1 of the Instrument to prohibit payments or benefits to members of an independent committee that are contingent on completion of a transaction under consideration by the committee.

Companion Policy

We made changes to the Companion Policy to add further guidance on best practices for directors compensation in the context of transactions to which the Instrument applies. We have also provided guidance on the application of the Instrument where related parties of an issuer involved in an acquisition transaction are provided an equity interest in the issuer or a successor issuer after completion of the transaction.

Local Repeals

Regulation Q-27 and Rule 61-501 will be repealed upon the coming into force of this Instrument. The companion policies to those instruments will also be revoked.

Questions

Questions relating to this notice may be referred to:

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December 14, 2007

PROPOSED MI 61-101 *PROTECTION OF MINORITY HOLDERS IN SPECIAL TRANSACTIONS*
NOTICE AND REQUEST FOR COMMENTS DATED AUGUST 25, 2006
SUMMARY OF COMMENTS AND RESPONSES

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
General	Four commenters strongly supported the objective of implementing a single harmonized instrument in Québec and Ontario.	We acknowledge the comment.
Definition of "beneficially owns"	Two commenters indicated that the proposed changes to the definition of "beneficially owns" could be interpreted as making a subsidiary the deemed owner of securities held by its parent, which would cause the subsidiary to be deemed to control its sister companies and even its own parent company that was in turn controlled by another parent company.	We have revised the definition of "beneficially owns" to takes into account comments received. We have clarified that "beneficial ownership" only applies to affiliated entities that are also subsidiary entities.
Definition of "business combination"	We received a comment suggesting that an equity termination transaction should not be subject to the business combination rules of the Instrument solely as a result of a related party being party to a connected transaction, where a related party does not receive non-identical consideration or a collateral benefit.	This provision came into force in Ontario in 2004 and was intended to clarify the application of Rule 61-501 where, for example, an amalgamation was carried out in conjunction with a sale of assets of one of the amalgamating issuers to a related party of that issuer. We are of the view that, as a policy matter, an equity termination transaction should be subject to the business combination requirements if another transaction involving a related party of the issuer is occurring at the same time or is conditional upon the business combination.
	One commenter noted that the inclusion of connected related party transactions in the definition of business combination prevents the operation of the 90% exemption from the minority approval requirements. The 90% exemption for business combinations is available only if interested parties within the meaning of subparagraph (c)(i) of the definition of interested party (a related party that is acquiring or combining with the issuer) own 90% or more of the securities of the class. As a result, a transaction that is a business combination solely as a result of a connected related party transaction may not have the 90% exemption available to it under the business combination rules in situations where the 90% exemption in the related party transaction rules would be available for the connected related party	This result is intentional. The 90% exemption is only available for business combinations where the person acquiring the securities of the issuer owns 90% or more of the relevant class and for related party transactions where the party to the transaction owns 90% or more of the securities of a class. The respective 90% exemptions do not allow these interested parties to aggregate their ownership where an equity termination transaction is caught as a business combination because of a connected transaction.

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
	transaction.	
Definition of "collateral benefit"	One commenter submitted that it is inconsistent to prohibit management buy outs by way of take-over bid in the take-over bid rules, while providing a comprehensive regime for their regulation as insider bids in the proposed Instrument. The Instrument regulates insider bids, which include take-over bids made by an acquiror acting jointly or in concert with directors or senior officers of the issuer. However, under the take-over bid rules in Part XX of the *Securities Act* (Ontario) and proposed National Instrument 62-104 – *Takeover Bids and Issuer Bids*, the prohibition on collateral benefits may restrict the ability to effect a management buy out by way of take-over bid as arrangements for management to retain equity in the continuing business could be viewed as a collateral benefit.	We acknowledge the comment and do not intend to make changes to the Instrument. The issue is not within the scope of this Instrument.
Definition of "connected transaction"	Three commenters noted that the definition of connected transaction is extremely broad. For example, the definition of "connected transaction" does not exclude downstream transactions which could potentially make the otherwise "pro rata" transaction a "business combination". In addition, the reference to transactions "negotiated or completed at approximately the same time" results in transactions which may be independent of each other being required to be aggregated for purposes of the 25% of market capitalization exemption.	We acknowledge the concerns raised regarding the breadth of the definition of connected transactions. However, we are of the view that in the rare circumstances where the definition would have inappropriate results, exemptive relief would be available.
Definition of "controlled"	One commenter indicated that the proposed MI 61-101 includes a change in the definition of the word "controlled" with the result that where a person is entitled to elect a majority of the directors of an entity, such entity would be considered to be a subsidiary of that person, notwithstanding that the person may not hold voting securities which carry 50% of the votes for the election of directors. The impact of the change in the definition is to introduce the notion of "control in fact".	We have deleted the definition of "controlled" and introduced an interpretation section 1.7 to harmonize the notion of control with the definition used in MI 62-104, and in Ontario, with Part XX of the *Securities Act*. We agree with the comment and confirm that we are introducing the notion of "control in fact".
Definition of "downstream transaction"	One commenter submitted that the limit of 5% of any class of voting or equity securities of the transacting related party is more restrictive than necessary, as it refers to exercising control or direction over securities and is calculated on a class by class basis for voting and equity securities. The commenter suggested that the 5%	The limit of 5% is intentional. We are of the view that the exemption sets an appropriate limit and takes into account both the control and ownership of related parties.

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
	limit should only refer to beneficial ownership and not the exercise of control or direction over and that the limit should be based on ownership of more than 5% of all outstanding equity securities and not on a separate class basis.	
Definition of "issuer insider"	One commenter did not support extending the issuer insider definition to officers, rather than just senior officers, especially with respect to subsidiaries.	Since the new definition of "insider" which refers to "officers" is not in effect, we will maintain the current reference to "senior officers" throughout the Instrument.
Definition of "prior valuation"	One commenter indicated that due to recent accounting changes, a number of issuers have been required to obtain valuations of certain material assets, including entire divisions in some circumstances. This commenter questioned whether these valuations would fit within the definition of "prior valuation".	The accounting change came into force in 2002. We are of the view that the valuations are prepared in the ordinary course of business for accounting purposes, without the participation of directors of an issuer and without having been made available to them. As such, they are not caught by the definition of "prior valuation".
Definition of "related party"	One commenter suggested that the definition of "bona fide lender" be amended so that a person could not be considered a related party by also being a bona fide lender.	We acknowledge the comment and amended the definition of "related party" to make it clear that a bona fide lender is only excluded from the definition of "related party" where the lender is a related party solely because of this status of bona fide lender. However, such a lender could be a related party if it is otherwise within the definition of "related party".
Definition of "related party transaction"	One commenter suggested to include a concept of a sale of assets "or a group of related assets" in paragraph (d) of the definition of "related party transaction", which relates to joint sales, in order to clarify the requirement for an evaluation of the aggregate assets sold and the aggregate purchase price and not an evaluation of whether the related party has received its proportionate share of the consideration for each individual asset of the business.	We are not aware of any problem with the exemption and do not suggest any change to the exemption.
	Two commenters felt that service arrangements with related parties are currently regulated through general corporate governance rules and the usefulness of extending to service agreements had not been demonstrated. Five commenters indicated that "services agreements" would be difficult to interpret in the context of the 25% of market capitalization exemption as drafted, given the difficulty in valuing such arrangement in assessing whether such arrangements are exempt from the minority approval requirements. One commenter submitted that employment contracts with senior executives which are approved by the board of directors should be	We have considered all the comments received and are of the view that the issues raised are important and an extensive analysis should be done before we propose any change to the definition. Accordingly, we have maintained the current definition.

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
	expressly excluded from the requirements of proposed MI 61-101 because the disclosure regime for executive compensation is prescribed by rules and regulations relating to proxy circulars. One commenter submitted services provided in the ordinary course of business should not be subject to any form of minority approval.	
Sections 2.2(1)(d), 4.2(3) and 5.3(3)	One commenter suggested that subsection 2.2(1) of the proposed Instrument set out a specific description of the additional disclosure required of an insider bid circular without reference to a form that is used for a different purpose. It would be clear what additional information will be required and whether the information pertains to the offeror or the offeree issuer.	Part 4 of the Companion Policy gives guidance on how to interpret the words "to the extent applicable and with necessary modifications". We are of the view that changes to the rule are not necessary.
Valuation exemption – sections 4.1(c) and 5.1(c).	Three commenters did not believe that it was advisable to use the beneficial ownership approach to the *de minimis* exemption in sections 4.1(c) and 5.1(c). In addition, a commenter suggested that the threshold be 10% to be consistent with the proposals in NI 62-104. Two commenters indicated that with the ability of beneficial owners to elect to be objecting beneficial owners (OBOs) under National Instrument 54-101, there is no way for an issuer to determine where those OBOs are located. Accordingly, an issuer cannot be certain whether the test in clauses 4.1(c) and 5.1(c) is satisfied.	The requirement is consistent with the requirement provided in Regulation Q-27 and Multilateral Instrument 62-104 *Take-over Bids and Issuer Bids*, and in Ontario, with Part XX of the *Securities Act*. The threshold of 10% is for foreign take-over bids and issuer bids; we do not believe that the threshold is appropriate in the context of this Instrument.
Valuation exemption – sections 4.4(1)(b) and 5.7(c)(i).	One commenter submitted that it did not make sense to subject a TSXV issuer that is also listed or quoted on a foreign exchange to the valuation requirement. The same comment was made in relation to the exemption in section 5.7(1)(c)(i).	The purpose of the exemption is to exempt junior issuers from the valuation requirement. If that issuer is listed on a senior exchange, we are of the view that the issuer is not a junior issuer and should not benefit from an exemption granted to a junior issuer.
Valuation exemption – section 4.4(1)(d)	One commenter questioned whether the amendment to the auction exemption resulted in a different interpretation of the object of the valuation.	The change is intended to address a drafting issue and the requirement is the same as the current one. We believe that the text is now easier to read.
90% minority approval exemption - sections 4.6 (1)(b) and 5.7(1)(h)	One commenter submitted that the 90% exemption should be available where the relevant interested parties beneficially own or exercise control or direction over 90% or more of the outstanding securities of the class. Limiting the exemption to parties that own more than 90% could result in a scenario where minority approval would be based on a very small proportion of the class of securities due to an interested party owning less than 90% of the class, but controlling or directing additional	The purpose of the 90% exemption is to provide a narrow exemption for the owner of a significant economic interest in an issuer to acquire the remainder without minority approval. However, the minority approval determination must exclude not only the economic interest of interested parties but also any securities over which they exercise control or direction. We have recognized, in section 3.3 of the Companion Policy, that relief from minority approval may be

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
	securities of the class.	appropriate in situation involving abusive minority tactics.
Transitional provision – section 5.1	One commenter indicated that removing the exemption for transactions agreed to prior to December 15, 2000 was not advisable, as there will be agreements entered into prior to that time that have not been fully performed.	We acknowledge the comment and will keep the transitional provision as it now exists.
Former section 5.5(9)	Two commenters noted that the exemption provided currently in section 5.5(9) of OSC Rule 61-501 could apply to types of transaction that will not necessarily be business combinations and accordingly they recommended leaving the exemption in the related party transaction section as well as including it under the business combinations section.	The exemption will be included in both Parts 4 and 5.
Valuation exemption – section 5.7(c)(i)	One commenter suggested that London's AIM stock market be treated as akin to the TSX-V and CNQ for the purposes of section 5.7(1)(c)(i) and similar exemptions.	We acknowledge the comment and have conformed the exemption with the definition of "venture issuer" in National Instrument 51-102 *Continuous Disclosure Obligations*.
Prohibition against directors receiving special benefits - section 7.1	Seven commenters believed that the concerns of the regulators could be addressed by prohibiting any such payments if they were contingent or otherwise conditional on completion of the transaction. One commenter similarly believed it was appropriate for an incumbent board of a target, at the conclusion of the special committee's work, but prior to completion of the transaction, to fix remuneration for the members of the special committee based on the board's analysis of the time and effort which the independent directors had just devoted to discharging their mandate and acting in the best interests of the shareholders of the target. This type of remuneration is compensation for time and talent expended and is not a "benefit" or a "payment for completion of the transaction" within the meaning of this section. The commenter believed this point should be acknowledged in the Companion Policy.	We agree that directors should be compensated for their time and effort. However, we believe that the independence of directors can be compromised if compensation is linked to completion of a transaction. We amended section 7.1 of the rule to prohibit payments by reason of completion of a transaction and limited the prohibition to the members of the independent committee. We also added further guidance in the Companion Policy on best practices for directors compensation in the context of transactions to which the Instrument applies.
	One commenter submitted that the current rule provides in section 7.1(2)(e) that a director will be deemed to not be independent for purposes of the current rule where such director would reasonably be expected to receive a benefit as a consequence of the transaction that is not also available on a *pro rata* basis to shareholders. The commenter noted that OSC staff has in the past interpreted the term "benefit" in the definition of "collateral benefit" in connection with the exchange or acceleration of options of a target company held by directors and officers for options of the acquiror. Based on this	This is not an issue as a result of proposed changes to section 7.1. However, we are of the view that where the exchange or acceleration of stock options is available to all holders of options, the independence of directors who hold options is not generally compromised.

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
	broad interpretation of the term "benefit", section 7.1(2)(e) of the current rule and section 7.1(3) of the Instrument are problematic. The commenter submited that the Instrument or the Companion Policy should clarify these matters.	
	The commenter noted that section 7.1(2)(b) of the Instrument deems a current or former director of an affiliated entity of an interested party to be not independent. A group of companies with a common controlling shareholder may have an individual who is independent of management and the controlling shareholder serving on more than one board in the group (or within 12 months, move from one board in the group to another). The commenter submitted that such a director should not be disqualified from serving on an independent committee solely as a result of serving as a director of an affiliated entity of the interested party.	This is not an issue as a result of proposed changes to section 7.1. We acknowledge the comment and do not intend to make any changes to the Instrument. We are of the view that in these circumstances, the independence of directors is compromised and directors should be disqualified from serving on an independent committee.
	One commenter suggested that the proposed prohibition against independent directors receiving special benefits could also be problematic if it would extend to their continuing role as directors (or acting in similar capacities, such as on an advisory board) of the issuer or its affiliates or their successors or assigns.	This is not an issue as a result of proposed changes to section 7.1. As stated in subsection 7.1(1) of the Instrument, it is a question of fact whether a director of an issuer is independent. It is the responsibility of the board to determine if a continuing position as director would constitute, in and by itself, an exclusion within the meaning of paragraph (e) of subsection 7.1 (2).
	One commenter questioned the removal of “Subject to subsections (2) and (3)” in subsection (1). The Instrument should make it clear that subsections (2) and (3) qualify subsection (1).	We do not agree that there is an issue with the removal of the words. We do not propose to make the suggested change.
	One commenter had some difficulty with the drafting of proposed subsection (3), and recommended that the post-closing prohibition apply only to members of the independent committee, not to independent directors generally.	We agree with the comments and have made the suggested changes.
Part 5 of NI 62-103	One commenter suggested that the “Chinese wall” aggregation relief in Part 5 of NI 62-103 be extended to the minority approval requirements of the proposed Instrument.	We acknowledge the comment and do not intend to make changes to the Instrument at this time. We are of the view that this is an important issues that requires further analysis.
Valuation requirements in other securities acts	One commenter noted that securities legislation in other jurisdictions requires that a circular for an insider bid include a summary of a valuation of the offeree issuer and in some cases, imposes valuation requirements in connection with going private transactions. However, such securities legislation does not include analogous exemptions from the valuation requirement. The commenter suggested that the Commissions consider an initiative to harmonize the insider bid/going private transaction valuation requirements.	We acknowledge the comment. However, this issue is not within the scope of this Instrument.

REFERENCE	SUMMARIZED COMMENT	AMF AND OSC RESPONSE
Other	One commenter questioned why section 1.6 of current OSC Rule 61-501 was no longer required, unless certain relevant provisions of the Ontario *Securities Act* was amended prior to the Instrument coming into force.	The *Securities Act* (Ontario) has been amended to address this issue.

MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

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MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Instrument

"affected security" means

(a) for a business combination of an issuer, an equity security of the issuer in which the interest of a security holder would be terminated as a consequence of the transaction, and

(b) for a related party transaction of an issuer, an equity security of the issuer;

"affiliated entity": a person is considered to be an affiliated entity of another person if one is the subsidiary entity of the other or if both are subsidiary entities of the same person;

"arm's length" has the meaning ascribed to that term in section 251 of the *Income Tax Act* (Canada), or any successor to that legislation, and, in addition to that meaning, a person is deemed not to deal at arm's length with a related party of that person;

"associated entity", when used to indicate a relationship with a person, means

(a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding securities of the issuer,

(b) any partner of the person,

(c) any trust or estate in which the person has a substantial beneficial interest or in respect of which a person serves as trustee or in a similar capacity,

(d) a relative of that person, including

(i) the spouse, or

(ii) a relative of the person's spouse

if the relative has the same home as that person;

"beneficially owns" includes direct or indirect beneficial ownership of a security holder;

"bid" means a take-over bid or an issuer bid to which Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* applies, and in Ontario, a formal take-over bid or formal issuer bid as defined in section 89(1) of the *Securities Act*;

"bona fide lender" means a person that

(a) is an issuer insider of an issuer solely through the holding of, or the exercise of control or direction over, securities used as collateral for a debt under a written agreement entered into by the person as a lender, assignee, transferee or participant,

(b) is not yet legally entitled to dispose of the securities for the purpose of applying proceeds of realization in repayment of the secured debt, and

(c) was not a related party of the issuer at the time the agreement referred to in paragraph (a) was entered into;

"business combination" means, for an issuer, an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include

(a) an acquisition of an equity security of the issuer under a statutory right of compulsory acquisition or, if the issuer is not a corporation, under provisions substantially equivalent to those comprising section 206 of the CBCA,

(b) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,

(c) a termination of a holder's interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership,

(d) a downstream transaction for the issuer, or

(e) a transaction in which no person that is a related party of the issuer at the time the transaction is agreed to

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the transaction, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per equity security that is not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"CBCA" means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;

"class" includes a series of a class;

"collateral benefit", for a transaction of an issuer or for a bid for securities of an issuer, means any benefit that a related party of the issuer is entitled to receive, directly or indirectly, as a consequence of the transaction or bid, including, without limitation, an increase in salary, a lump sum payment, a payment for surrendering securities, or other enhancement in benefits related to past or future services as an employee, director or consultant of the issuer or of another person, regardless of the existence of any offsetting costs to the related party or whether the benefit is provided, or agreed to, by the issuer, another party to the transaction or the offeror in the bid, but does not include

(a) a payment or distribution per equity security that is identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(b) an enhancement of employee benefits resulting from participation by the related party in a group plan, other than an incentive plan, for employees of a successor to the business of the issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the issuer who hold positions of a similar nature to the position held by the related party, or

(c) a benefit, not described in paragraph (b), that is received solely in connection with the related party's services as an employee, director or consultant of the issuer, of an affiliated entity of the issuer or of a successor to the business of the issuer, if

(i) the benefit is not conferred for the purpose, in whole or in part, of increasing the value of the consideration paid to the related party for securities relinquished under the transaction or bid,

(ii) the conferring of the benefit is not, by its terms, conditional on the related party supporting the transaction or bid in any manner,

(iii) full particulars of the benefit are disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid, and

(iv) (A) at the time the transaction is agreed to or the bid is publicly announced, the related party and its associated entities beneficially own or exercise control or direction over less than one per cent of the outstanding securities of each class of equity securities of the issuer, or

(B) if the transaction is a business combination for the issuer or a bid for securities of the issuer,

(I) the related party discloses to an independent committee of the issuer the amount of consideration that the related party expects it will be beneficially entitled to receive, under the terms of the transaction or bid, in exchange for the equity securities beneficially owned by the related party,

(II) the independent committee, acting in good faith, determines that the value of the benefit, net of any offsetting costs to the related party, is less than five per cent of the value referred to in subclause (I), and

(III) the independent committee's determination is disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid;

"connected transactions" means two or more transactions that have at least one party in common, directly or indirectly, other than transactions related solely to services as an employee, director or consultant, and

(a) are negotiated or completed at approximately the same time, or

(b) the completion of at least one of the transactions is conditional on the completion of each of the other transactions;

"consultant" means, for an issuer, a person, other than an employee or senior officer of the issuer or of an affiliated entity of the issuer, that

(a) is engaged to provide services to the issuer or an affiliated entity of the issuer, other than services provided in relation to a distribution,

(b) provides the services under a written contract with the issuer or an affiliated entity of the issuer, and

(c) spends or will spend a significant amount of time and attention of the affairs and business of the issuer or an affiliated entity or the issuer

and includes, for an individual consultant a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner;

"convertible" means convertible into, exchangeable for, or carrying the right or obligation to purchase or otherwise acquire or cause the purchase or acquisition of, another security;

"director", for an issuer that is a limited partnership, includes a director of the general partner of the issuer, except for the purposes of the interpretation of "control";

"disclosure document" means

(a) for a take-over bid including an insider bid, a take-over bid circular sent to holders of offeree securities,

(b) for an issuer bid, an issuer bid circular sent to holders of offeree securities, and

(c) for a business combination or a related party transaction,

(i) an information circular sent to holders of affected securities,

(ii) if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, or

(iii) if no information circular or other document referred to in subparagraph (ii) is required, a material change report filed for the transaction;

"downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to

(a) the issuer is a control person of the related party, and

(b) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction;

"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;

"fair market value" means, except as provided in paragraph 6.4(2)(d), the monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act;

"formal valuation" means a valuation prepared in accordance with Part 6;

"freely tradeable" means, for securities, that

(a) the securities are transferable,

(b) the securities are not subject to any escrow requirements,

(c) the securities do not form part of the holdings of any control person,

(d) the securities are not subject to any cease trade order imposed by a securities regulatory authority,

(e) all hold periods imposed by securities legislation before the securities can be traded without a prospectus or in reliance on a prospectus exemption have expired, and

(f) any period of time imposed by securities legislation for which the issuer has to have been a reporting issuer in a jurisdiction before the securities can be traded without a prospectus or in reliance on a prospectus exemption has passed;

"incentive plan" means a group plan that provides for stock options or other equity incentives, profit sharing, bonuses, or other performance-based payments;

"independent committee" means, for an issuer, a committee consisting exclusively of one or more independent directors of the issuer;

"independent director" means, for an issuer in respect of a transaction or bid, a director who is independent as determined in section 7.1;

"independent valuator" means, for a transaction or bid, a valuator that is independent of all interested parties in the transaction, as determined in section 6.1;

"insider bid" means a take-over bid made by

(a) an issuer insider of the offeree issuer,

(b) an associated or affiliated entity of an issuer insider of the offeree issuer,

(c) an associated or affiliated entity of the offeree issuer,

(d) a person described in paragraph (a), (b) or (c) at any time within 12 months preceding the commencement of the bid, or

(e) a joint actor with a person referred to in paragraph (a), (b), (c) or (d);

"interested party" means

(a) for a take-over bid including an insider bid, the offeror or a joint actor with the offeror,

(b) for an issuer bid

(i) the issuer, and

(ii) any control person of the issuer, or any person that would reasonably be expected to be a control person of the issuer upon successful completion of the issuer bid,

(c) for a business combination, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the business combination, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per affected security that is not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities, and

(d) for a related party transaction, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) is a party to the transaction, unless it is a party only in its capacity as a holder of affected securities and is treated identically to the general body of holders in Canada of securities of the same class on a per security basis, or

(ii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) a collateral benefit, or

(B) a payment or distribution made to one or more holders of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless the amount of that payment or distribution is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"issuer bid" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*;

"issuer insider" means, for an issuer

(a) a director or senior officer of the issuer,

(b) a director or senior officer of a person that is itself an issuer insider or subsidiary entity of the issuer, or

(c) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of the issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities;

"joint actors", when used to describe the relationship among two or more persons, means persons "acting jointly or in concert" as determined in accordance with section 1.9 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 91 of the *Securities Act*, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making a bid, or with a person involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;

"liquid market" means a market that meets the criteria specified in section 1.2;

"market capitalization" of an issuer means, for a transaction, the aggregate market price of all outstanding securities of all classes of equity securities of the issuer, the market price of the outstanding securities of a class being

(a) in the case of equity securities of a class for which there is a published market, the product of

(i) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no securities of the class were outstanding on that day, on the first business day after that day that securities of the class became outstanding, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 1.11 (1), (2) and (3) of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, subsections 1.3 (1), (2) and (3) of Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids*,

(b) in the case of equity securities of a class for which there is no published market but that are currently convertible into a class of equity securities for which there is a published market, the product of

(i) the number of equity securities into which the convertible securities were convertible as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no convertible securities were outstanding or convertible on that day, on the first business day after that day that the convertible securities became outstanding or convertible, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 1.11 (1), (2) and (3) of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, subsections 1.3 (1), (2) and (3) of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, and

(c) in the case of equity securities of a class not referred to in paragraph (a) or (b), the amount determined by the issuer's board of directors in good faith to represent the fair market value of the outstanding securities of that class;

"minority approval" means, for a business combination or related party transaction of an issuer, approval of the proposed transaction by a majority of the votes as specified in Part 8, cast by holders of each class of affected securities at a meeting of security holders of that class called to consider the transaction;

"offeree issuer" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*;

"offeree security" means a security that is subject to a take-over bid or issuer bid;

"offeror" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*;

"person" in Ontario, includes

(a) an individual,

(b) a corporation,

(c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

(d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"prior valuation" means a valuation or appraisal of an issuer or its securities or material assets, whether or not prepared by an independent valuator, that, if disclosed, would reasonably be expected to affect the decision of a security holder to vote for or against a transaction, or to retain or dispose of affected securities or offeree securities, other than

(a) a report of a valuation or appraisal prepared by a person other than the issuer, if

(i) the report was not solicited by the issuer, and

(ii) the person preparing the report did so without knowledge of any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(b) an internal valuation or appraisal prepared for the issuer in the ordinary course of business that has not been made available to, and has been prepared without the participation of

(i) the board of directors of the issuer, or

(ii) any director or senior officer of an interested party, except a senior officer of the issuer in the case of an issuer bid,

(c) a report of a market analyst or financial analyst that

(i) has been prepared by or for and at the expense of a person other than the issuer, an interested party, or an associated or affiliated entity of the issuer or an interested party, and

(ii) is either generally available to clients of the analyst or of the analyst's employer or of an associated or affiliated entity of the analyst's employer or, if not, is not based, so far as the person required to disclose a prior valuation is aware, on any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(d) a valuation or appraisal prepared by a person or a person retained by that person, for the purpose of assisting the person in determining the price at which to propose a transaction that resulted in the person becoming an issuer insider, if the valuation or appraisal is not made available to any of the independent directors of the issuer, or

(e) a valuation or appraisal prepared by an interested party or a person retained by the interested party, for the purpose of assisting the interested party in determining the price at which to propose a transaction that, if pursued, would be an insider bid, business combination or related party transaction, if the valuation or appraisal is not made available to any of the independent directors of the issuer;

"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;

"related party" of an entity means a person, other than a person that is solely a bona fide lender, that, at the relevant time and after reasonable inquiry, is known by the entity or a director or senior officer of the entity to be

(a) a control person of the entity,

(b) a person of which a person referred to in paragraph (a) is a control person,

(c) a person of which the entity is a control person,

(d) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of the entity carrying more than 10% of the voting rights attached to all the entity's outstanding voting securities,

(e) a director or senior officer of

(i) the entity, or

(ii) a person described in any other paragraph of this definition,

(f) a person that manages or directs, to any substantial degree, the affairs or operations of the entity under an agreement, arrangement or understanding between the person and the entity, including the general partner of an entity that is a limited partnership, but excluding a person acting under bankruptcy or insolvency law,

(g) a person of which persons described in any paragraph of this definition beneficially own, in the aggregate, more than 50 per cent of the securities of any outstanding class of equity securities, or

(h) an affiliated entity of any person described in any other paragraph of this definition;

"related party transaction" means, for an issuer, a transaction between the issuer and a person that is a related party of the issuer at the time the transaction is agreed to, whether or not there are also other parties to the transaction, as a consequence of which, either through the transaction itself or together with connected transactions, the issuer directly or indirectly

(a) purchases or acquires an asset from the related party for valuable consideration,

(b) purchases or acquires, as a joint actor with the related party, an asset from a third party if the proportion of the asset acquired by the issuer is less than the proportion of the consideration paid by the issuer,

(c) sells, transfers or disposes of an asset to the related party,

(d) sells, transfers or disposes of, as a joint actor with the related party, an asset to a third party if the proportion of the consideration received by the issuer is less than the proportion of the asset sold, transferred or disposed of by the issuer,

(e) leases property to or from the related party,

(f) acquires the related party, or combines with the related party, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(g) issues a security to the related party or subscribes for a security of the related party,

(h) amends the terms of a security of the issuer if the security is beneficially owned, or is one over which control or direction is exercised, by the related party, or agrees to the amendment of the terms of a security of the related party if the security is beneficially owned by the issuer or is one over which the issuer exercises control or direction,

(i) assumes or otherwise becomes subject to a liability of the related party,

(j) borrows money from or lends money to the related party, or enters into a credit facility with the related party,

(k) releases, cancels or forgives a debt or liability owed by the related party,

(l) materially amends the terms of an outstanding debt or liability owed by or to the related party, or the terms of an outstanding credit facility with the related party, or

(m) provides a guarantee or collateral security for a debt or liability of the related party, or materially amends the terms of the guarantee or security;

"senior officer" means the chair or a vice-chair of the board of directors, a president, a vice-president, the secretary, the treasurer or the general manager of an issuer or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and for an issuer that is a limited partnership, includes a senior officer of the general partner of the issuer;

"subsidiary entity" means a person that is controlled directly or indirectly by another person and includes a subsidiary of that subsidiary;

"take-over bid" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*; and

"wholly-owned subsidiary entity": a person is considered to be a wholly-owned subsidiary entity of an issuer if the issuer owns, directly or indirectly, all the voting and equity securities and securities convertible into voting and equity securities of the person.

1.2 Liquid Market

(1) For the purposes of this Instrument, a liquid market in a class of securities of an issuer in respect of a transaction exists at a particular time only if

(a) there is a published market for the class of securities,

(i) during the period of 12 months before the date the transaction is agreed to in the case of a business combination, or 12 months before the date the transaction is publicly announced in the case of an insider bid or issuer bid

(A) the number of outstanding securities of the class was at all times at least 5,000,000, excluding securities beneficially owned, or over which control or direction was exercised, by related parties and securities that were not freely tradeable,

(B) the aggregate trading volume of the class of securities on the published market on which the class was principally traded was at least 1,000,000 securities,

(C) there were at least 1,000 trades in securities of the class on the published market on which the class was principally traded, and

(D) the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000, and

(ii) the market value of the class of securities on the published market on which the class was principally traded, as determined in accordance with subsection (2), was at least $75,000,000 for the calendar month preceding the calendar month

(A) in which the transaction is agreed to, in the case of a business combination, or

(B) in which the transaction is publicly announced, in the case of an insider bid or issuer bid, or

(b) if the test set out in paragraph (a) is not met and there is a published market for the class of securities,

(i) a person that is qualified and independent of all interested parties to the transaction, as determined on the same basis applicable to a valuator preparing a formal valuation under section 6.1, provides an opinion to the issuer that there is a liquid market in the class at the date the transaction is agreed to in the case of a business combination, or at the date the transaction is publicly announced in the case of an insider bid or issuer bid,

(ii) the opinion is included in the disclosure document for the transaction, and

(iii) the disclosure document for the transaction includes the same disclosure regarding the person providing the opinion as is required for a valuator under section 6.2.

(2) For the purpose of determining whether an issuer satisfies the market value requirement of subparagraph (1)(a)(ii), the market value of a class of securities for a calendar month is calculated by multiplying

(a) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable, by

(b) the arithmetic average of the closing prices of the securities of that class on the published market on which that class was principally traded for each of the trading days during the calendar month, if the published market provides a closing price for the securities, or

(c) the arithmetic average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month, if the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day.

1.3 Transactions by Wholly-Owned Subsidiary Entity – For the purposes of this Instrument, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be also a transaction of the issuer, and, for greater certainty, a bid made by a wholly-owned subsidiary entity of an issuer for securities of the issuer is deemed to be also an issuer bid made by the issuer.

1.4 Transactions by Underlying Operating Entity of Income Trust – For the purposes of this Instrument, a transaction of an underlying operating entity of an income trust within the meaning of National Policy 41-201 *Income Trusts and Other Indirect Offerings* is deemed to be a transaction of the income trust, and a related party of the underlying operating entity is deemed to be a related party of the income trust.

1.5 Redeemable Securities as Consideration in Business Combination – For the purposes of this Instrument, if all or part of the consideration that holders of affected securities receive in a business combination consists of securities that are redeemed for cash within seven days of their issuance, the cash proceeds of the redemption, rather than the redeemed securities, are deemed to be consideration that the holders of the affected securities receive in the business combination.

1.6 Beneficial Ownership

(1) Despite any other provision in securities legislation, for the purposes of this Instrument,

(a) a person is deemed to own beneficially securities beneficially owned by a person it controls or by an affiliated entity of the controlled person if the affiliated entity is a subsidiary entity of the controlled person,

(b) a person is deemed to own beneficially securities beneficially owned by its affiliated entity if the affiliated entity is a subsidiary entity of the person,

(2) For the purposes of the definitions of collateral benefit, control person, downstream transaction and related party, in determining beneficial ownership, the following provisions apply:

(a) in Ontario, section 90 of the *Securities Act*;

(b) in Québec, section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*.

(3) In Québec, for the purposes of this Instrument, a person that beneficially owns securities means a person that owns the securities or that holds securities registered under the name of an intermediary acting as nominee, including a trustee or agent.

1.7 Control – For the purposes of the definition of "subsidiary entity", a person controls a second person if

(a) the person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the person to elect a majority of the directors of the second person, unless the person beneficially owns or exercises control or direction over voting securities only to secure an obligation,

(b) the second person is a partnership, the person beneficially owns or exercises control or direction over more than 50 per cent of the interests in the partnership, or

(c) the second person is a limited partnership, the person is the general partner of the limited partnership or the control person of the general partner.

1.8 Entity – For the purposes of the definition of "related party", an entity has the meaning ascribed to the term "person" in section 1.1, other than an individual.

PART 2 INSIDER BIDS

2.1 Application

(1) This Part applies to a bid that is an insider bid.

(2) This Part does not apply to an insider bid in respect of which the offeror complies with National Instrument 71-101 *The Multijurisdictional Disclosure System*, unless persons whose last address as shown on the books of the offeree issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of that instrument, hold 20 per cent or more of the class of securities that is the subject of the bid.

2.2 Disclosure

(1) The offeror shall disclose in the disclosure document for an insider bid

(a) the background to the insider bid,

(b) in accordance with section 6.8, every prior valuation in respect of the offeree issuer that has been made in the 24 months before the date of the insider bid, and the existence of which is known, after reasonable inquiry, to the offeror or any director or senior officer of the offeror,

(c) the formal valuation exemption, if any, on which the offeror is relying under section 2.4 and the facts supporting that reliance, and

(d) the disclosure required by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, to the extent applicable and with necessary modifications.

(2) The board of directors of the offeree issuer shall include in the directors' circular for an insider bid

(a) disclosure, in accordance with section 6.8, of every prior valuation in respect of the offeree issuer not disclosed in the disclosure document for the insider bid

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeree issuer or to any director or senior officer of the offeree issuer,

(b) a description of the background to the insider bid to the extent the background has not been disclosed in the disclosure document for the insider bid,

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the insider bid, which offer was received by the issuer during the 24 months before the insider bid was publicly announced, and a description of the offer and the background to the offer, and

(d) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the offeree issuer for the insider bid, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

2.3 Formal Valuation

(1) The offeror in an insider bid shall

(a) obtain, at its own expense, a formal valuation,

(b) provide the disclosure required by section 6.2,

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the insider bid, unless the formal valuation is included in its entirety in the disclosure document, and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) An independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to

(a) determine who the valuator will be,

(b) supervise the preparation of the formal valuation, and

(c) use its best efforts to ensure that the formal valuation is completed and provided to the offeror in a timely manner.

2.4 Exemptions from Formal Valuation Requirement

(1) Section 2.3 does not apply to an offeror in connection with an insider bid in any of the following circumstances:

(a) **Lack of Knowledge and Representation** – neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed,

(b) **Previous Arm's Length Negotiations** -– all of the following conditions are satisfied:

(i) the consideration per security under the insider bid is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the offeree issuer in arm's length negotiations in connection with

(A) the making of the insider bid,

(B) one or more other transactions agreed to within 12 months before the date of the first public announcement of the insider bid, or

(C) a combination of transactions referred to in clauses (A) and (B),

(ii) at least one of the selling security holders party to an agreement referred to in clause (i)(A) or (B) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(A) at least five per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), or

(B) at least 10 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2),

(iii) one or more of the selling security holders party to any of the transactions referred to in subparagraph (i) beneficially own or exercise control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (3), beneficially owned, or over which control or direction was exercised, by persons other than the person, and joint actors with the person, that entered into the agreements with the selling security holders,

(iv) the offeror reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (i)

(A) each selling security holder party to the agreement had full knowledge and access to information concerning the offeree issuer and its securities, and

(B) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by that selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(v) at the time of each of the agreements referred to in subparagraph (i), the offeror did not know of any material information in respect of the offeree issuer or the offeree securities that

(A) had not been generally disclosed, and

(B) if generally disclosed, could have reasonably been expected to increase the agreed consideration,

(vi) if any of the agreements referred to in subparagraph (i) was entered into with a selling security holder by a person other than the offeror, the offeror reasonably believes, after reasonable inquiry, that at the time of that agreement, the person did not know of any material information in respect of the offeree issuer or the offeree securities that

(A) had not been generally disclosed, and

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(vii) the offeror does not know, after reasonable inquiry, of any material information in respect of the offeree issuer or the offeree securities since the time of each of the agreements referred to in subparagraph (i) that has not been generally disclosed and could reasonably be expected to increase the value of the offeree securities;

(c) **Auction** – all of the following conditions are satisfied:

(i) the insider bid is publicly announced or made while

(A) one or more bids for securities of the same class that is the subject of the insider bid have been made and are outstanding, or

(B) one or more proposed transactions are outstanding that

(I) are business combinations in respect of securities of the same class that is the subject of the insider bid and ascribe a per security value to those securities, or

(II) would be business combinations in respect of securities of the same class that is the subject of the insider bid, except that they come within the exception in paragraph (e) of the definition of business combination and ascribe a per security value to those securities,

(ii) at the time the insider bid is made, the offeree issuer has provided equal access to the offeree issuer, and to information concerning the offeree issuer and its securities, to the offeror in the insider bid, all offerors in the other bids, and all parties to the proposed transactions described in clause (i)(B),

(iii) the offeror, in the disclosure document for the insider bid,

(A) includes all material information concerning the offeree issuer and its securities that is known to the offeror after reasonable inquiry but has not been generally disclosed, together with a description of the nature of the offeror's access to the issuer, and

(B) states that the offeror does not know, after reasonable inquiry, of any material information concerning the offeree issuer and its securities other than information that has been disclosed under clause (A) or that has otherwise been generally disclosed.

(2) For the purposes of subparagraph (b)(ii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, or section 5.4 of National Instrument 51-102 Continuous Disclosure Obligations, immediately preceding the date of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1).

(3) For the purposes of subparagraph (b)(iii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph (b)(i) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, or section 5.4 of National Instrument 51-102 *Continuous Disclosure Obligations*, immediately preceding the date of the last of the agreements referred to in subparagraph (b)(i) of subsection (1).

PART 3 ISSUER BIDS

3.1 Application

(1) This Part applies to a bid that is an issuer bid.

(2) This Part does not apply to an issuer bid that complies with National Instrument 71-101 *The Multijurisdictional Disclosure System*, unless persons whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of that instrument, hold 20 per cent or more of the class of securities that is the subject of the bid.

3.2 Disclosure – The issuer shall include in the disclosure document for an issuer bid

(a) a description of the background to the issuer bid,

(b) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the issuer bid, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the issuer bid, which offer was received by the issuer during the 24 months before the issuer bid was publicly announced, and a description of the offer and the background to the offer,

(d) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the issuer bid, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(e) a statement of the intention, if known to the issuer after reasonable inquiry, of every interested party to accept or not to accept the issuer bid,

(f) a description of the effect that the issuer anticipates the issuer bid, if successful, will have on the direct or indirect voting interest in the issuer of every interested party, and

(g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 3.4 and the facts supporting that reliance.

3.3 Formal Valuation

(1) An issuer that makes an issuer bid shall

(a) obtain a formal valuation,

(b) provide the disclosure required by section 6.2,

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the issuer bid, unless the formal valuation is included in its entirety in the disclosure document,

(d) if there is an interested party other than the issuer, state in the disclosure document who will pay or has paid for the valuation, and

(e) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

3.4 Exemptions from Formal Valuation Requirement – Section 3.3 does not apply to an issuer in connection with an issuer bid in any of the following circumstances:

(a) **Bid for Non-Convertible Securities** – the issuer bid is for securities that are not equity securities and that are not, directly or indirectly, convertible into equity securities,

(b) **Liquid Market** – the issuer bid is made for securities for which

(i) a liquid market exists,

(ii) it is reasonable to conclude that, following the completion of the bid, there will be a market for holders of the securities who do not tender to the bid that is not materially less liquid than the market that existed at the time of the making of the bid, and

(iii) if an opinion referred to in paragraph (b) of subsection 1.2(1) is provided, the person providing the opinion reaches the conclusion described in subparagraph (b)(ii) of this section 3.4 and so states in its opinion.

PART 4 BUSINESS COMBINATIONS

4.1 Application – This Part does not apply to an issuer carrying out a business combination if

(a) the issuer is not a reporting issuer,

(b) the issuer is a mutual fund, or

(c) (i) at the time the business combination is agreed to, securities held by beneficial owners in the local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities in the local jurisdiction.

4.2 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a business combination for which section 4.5 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a business combination shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, to the extent applicable and with necessary modifications,

(b) a description of the background to the business combination,

(c) disclosure in accordance with section 6.8 of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(d) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the business combination was agreed to, and a description of the offer and the background to the offer,

(e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(f) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 4.4 and the facts supporting that reliance,

(g) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the business combination is obtained, and

(h) the identity of the holders of securities specified in paragraph (g) together with their individual holdings.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the business combination or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change, and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

4.3 Formal Valuation

(1) An issuer shall obtain a formal valuation for a business combination if

(a) an interested party would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors, or

(b) an interested party is a party to any connected transaction to the business combination, if the connected transaction is a related party transaction for which the issuer is required to obtain a formal valuation under section 5.4.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) provide the disclosure required by section 6.2,

(b) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the business combination, unless the formal valuation is included in its entirety in the disclosure document,

(c) state in the disclosure document for the business combination who will pay or has paid for the valuation, and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

4.4 Exemptions from Formal Valuation Requirement

(1) Section 4.3 does not apply to an issuer carrying out a business combination in any of the following circumstances:

(a) **Issuer Not Listed on Specified Markets** – no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

(b) **Previous Arm's Length Negotiations** -– all of the following conditions are satisfied:

(i) the consideration per affected security under the business combination is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the issuer in arm's length negotiations in connection with

(A) the business combination,

(B) one or more other transactions agreed to within 12 months before the date of the first public announcement of the business combination, or

(C) a combination of transactions referred to in clauses (A) and (B),

(ii) at least one of the selling security holders party to an agreement referred to in clause (i)(A) or (B) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(A) at least five per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), or

(B) at least 10 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2),

(iii) one or more of the selling security holders party to any of the transactions referred to in subparagraph (i) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (3), beneficially owned or over which control or direction was exercised by persons other than the person, and joint actors with the person, that entered into the agreements with the selling security holders,

(iv) the person proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (i)

(A) each selling security holder party to the agreement had full knowledge of and access to information concerning the issuer and its securities, and

(B) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by the selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(v) at the time of each of the agreements referred to in subparagraph (i), the person proposing to carry out the business combination with the issuer did not know of any material information in respect of the issuer or the affected securities that

(A) had not been generally disclosed, and

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(vi) any of the agreements referred to in subparagraph (i) was entered into with a selling security holder by a person other than the person proposing to carry out the business combination with the issuer, the person proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of that agreement, the person entering into the agreement with the selling security holder did not know of any material information in respect of the issuer or the affected securities that

(A) had not been generally disclosed, and

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(vii) the person proposing to carry out the business combination with the issuer does not know, after reasonable inquiry, of any material information in respect of the issuer or the affected securities since the time of each of the agreements referred to in subparagraph (i) that has not been generally disclosed and could reasonably be expected to increase the value of the affected securities,

(c) **Auction** – all of the following conditions are satisfied:

(i) the business combination is publicly announced while

(A) one or more proposed transactions are outstanding that

(I) are business combinations in respect of the affected securities, and ascribe a per security value to those securities, or

(II) would be business combinations in respect of the affected securities, except that they come within the exception in paragraph (e) of the definition of business combination, and ascribe a per security value to those securities,

(B) one or more bids for the affected securities have been made and are outstanding,

(ii) at the time the disclosure document for the business combination is sent to the holders of affected securities, the issuer has provided equal access to the issuer, and to information concerning the issuer and its securities, to the person proposing to carry out the business combination with the issuer, all parties to the proposed transactions described in clause (i)(A), and all offerors in the bids,

(d) **Second Step Business Combination** – all of the following conditions are satisfied:

(i) the business combination is being effected by an offeror that made a bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(ii) the business combination is completed no later than 120 days after the date of expiry of the bid,

(iii) the consideration per security that the security holders would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the bid,

(iv) the disclosure document for the bid

(A) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or

under a business combination that would satisfy the conditions in subparagraphs (ii) and (iii),

(B) described the expected tax consequences of both the bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(I) were reasonably foreseeable to the offeror, and

(II) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(C) disclosed that the tax consequences of the bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination,

(e) **Non-redeemable Investment Fund** – the issuer is a non-redeemable investment fund that

(i) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(ii) at the time of publicly announcing the business combination, publicly disseminates the net asset value of its securities as of the business day before the announcement,

(f) **Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority** – the transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if all of the following conditions are satisfied:

(i) the transaction does not and will not have any adverse tax or other consequences to the issuer, the person resulting from the combination, or beneficial owners of affected securities generally,

(ii) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the person resulting from the combination,

(iii) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(iv) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the person resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,

(v) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

(2) For the purposes of subparagraph (b)(ii) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1), if the person proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or section 5.4 of National Instrument 51-102 *Continuous Disclosure Obligations*, immediately preceding the date of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1).

(3) For the purposes of subparagraph (b)(iii) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph (b)(i) of subsection (1), if the person proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or section 5.4 of National Instrument 51-102 Continuous Disclosure Obligations, immediately preceding the date of the last of the agreements referred to in subparagraph (b)(i) of subsection (1).

4.5 Minority Approval – An issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6 Exemptions from Minority Approval Requirement

(1) Section 4.5 does not apply to an issuer carrying out a business combination in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document for the business combination:

(a) **90 Per Cent Exemption** – subject to subsection (2), one or more persons that are interested parties within the meaning of subparagraph (c)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time that the business combination is agreed to, and either

(i) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(ii) if an appraisal remedy referred to in subparagraph (i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in section 190 of the CBCA and that is described in the disclosure document for the business combination;

(b) **Other Transactions Exempt from Formal Valuation** – the circumstances described in paragraph (f) of subsection 4.4 (1).

(2) If there are two or more classes of affected securities, paragraph (a) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

4.7 Conditions for Relief from Business Corporations Act Requirements – In Ontario, an issuer that is governed by the *Business Corporations Act* ("OBCA") and proposes to carry out a "going private transaction", as defined in subsection 190(1) of the OBCA, is exempt from subsections (2), (3) and (4) of section 190 of the OBCA, and is not required to make an application for exemption from those subsections under subsection 190(6) of the OBCA, if

(a) the transaction is not a business combination,

(b) Part 4 does not apply to the transaction by reason of section 4.1, or

(c) the transaction is carried out in compliance with Part 4, and, for this purpose, compliance includes reliance on any applicable exemption from a requirement of Part 4, including a discretionary exemption granted under section 9.1.

PART 5 RELATED PARTY TRANSACTIONS

5.1 Application – This Part does not apply to an issuer carrying out a related party transaction if

(a) the issuer is not a reporting issuer,

(b) the issuer is a mutual fund,

(c) (i) at the time the transaction is agreed to, securities held by beneficial owners in the local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities in the local jurisdiction,

(d) the parties to the transaction consist solely of

(i) an issuer and one or more of its wholly-owned subsidiary entities, or

(ii) wholly-owned subsidiary entities of the same issuer,

(e) the transaction is a business combination for the issuer,

(f) the transaction would be a business combination for the issuer except that it comes within an exception in any of paragraphs (a) to (e) of the definition of business combination,

(g) the transaction is a downstream transaction for the issuer,

(h) the issuer is obligated to and carries out the transaction substantially under the terms

(i) that were agreed to, and generally disclosed, before December 15, 2000 in Québec and before May 1, 2000 in Ontario,

(ii) that were agreed to, and generally disclosed, before the issuer became a reporting issuer, or

(iii) of a previous transaction the terms of which were generally disclosed, including an issuance of a convertible security, if the previous transaction was carried out in compliance with this Instrument, including in reliance on any applicable exemption or exclusion, or was not subject to this Instrument,

(i) the transaction is a distribution

(i) of securities of the issuer and is a related party transaction for the issuer solely because the interested party is an underwriter of the distribution, and

(ii) carried out in compliance with, including in reliance on any applicable exemption from, National Instrument 33-105 *Underwriting Conflicts*,

(j) the issuer is subject to the requirements of Part IX of the *Loan and Trust Corporations Act* (Ontario), the *Act respecting Trust Companies and Savings Companies* (Quebec), Part XI of the *Bank Act* (Canada), Part XI of the *Insurance Companies Act* (Canada), or Part XI of the *Trust and Loan Companies Act* (Canada), or any successor to that legislation, and the issuer complies with those requirements, or

(k) the transaction is a rights offering, dividend distribution, or any other transaction in which the general body of holders in Canada of affected securities of the same class are treated identically on a per security basis, if

(i) the transaction has no interested party within the meaning of paragraph (d) of the definition of interested party, or

(ii) the transaction is a rights offering, there is an interested party only because a related party of the issuer provides a stand-by commitment for the rights offering, and the stand-by commitment complies with National Instrument 45-101 *Rights Offerings*.

5.2 Material Change Report

(1) An issuer shall include in a material change report, if any, required to be filed under securities legislation for a related party transaction

(a) a description of the transaction and its material terms,

(b) the purpose and business reasons for the transaction,

(c) the anticipated effect of the transaction on the issuer's business and affairs,

(d) a description of

(i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties, and

(ii) the anticipated effect of the transaction on the percentage of securities of the issuer, or of an affiliated entity of the issuer, beneficially owned or controlled by each person referred to in subparagraph (i) for which there would be a material change in that percentage,

(e) unless this information will be included in another disclosure document for the transaction, a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(f) a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction,

(g) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the material change report, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(h) the general nature and material terms of any agreement entered into by the issuer, or a related party of the issuer, with an interested party or a joint actor with an interested party, in connection with the transaction, and

(i) disclosure of the formal valuation and minority approval exemptions, if any, on which the issuer is relying under sections 5.5 and 5.7, respectively, and the facts supporting reliance on the exemptions.

(2) If the issuer files a material change report less than 21 days before the expected date of the closing of the transaction, the issuer shall explain in the news release required to be issued under National Instrument 51-102 *Continuous Disclosure Obligations* and in the material change report why the shorter period is reasonable or necessary in the circumstances.

(3) Despite paragraphs (1)(f) and 5.4(2)(a), if the issuer is required to include a summary of the formal valuation in the material change report and the formal valuation is not available at the time the issuer files the material change report, the issuer shall file a supplementary material change report containing the disclosure required by paragraph (1)(f) as soon as the formal valuation is available.

(4) The issuer shall send a copy of any material change report prepared by it in respect of the transaction to any security holder of the issuer upon request and without charge.

5.3 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a related party transaction for which section 5.6 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a related party transaction to which this section applies shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, to the extent applicable and with necessary modifications,

(b) a description of the background to the transaction,

(c) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(d) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the transaction was agreed to, and a description of the offer and the background to the offer,

(e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(f) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 5.5 and the facts supporting that reliance,

(g) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained, and

(h) the identity of the holders of securities specified in paragraph (g) together with their individual holdings.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the related party transaction or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change, and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

5.4 Formal Valuation

(1) An issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the related party transaction, unless the formal valuation is included in its entirety in the disclosure document,

(b) state in the disclosure document who will pay or has paid for the valuation, and

(c) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

5.5 Exemptions from Formal Valuation Requirement – Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

(a) **Fair Market Value Not More Than 25% of Market Capitalization** – at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves interested parties, exceeds 25 per cent of the issuer's market capitalization, and for this purpose

(i) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds the threshold for this exemption shall be made by the issuer's board of directors acting in good faith,

(ii) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the transaction shall be deemed to be the consideration received by those persons,

(iii) if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemption in this paragraph (a), require formal valuations under this Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for this exemption are met, and

(iv) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets (the "future transaction"), the calculation of the fair market value for the initial transaction shall include the fair market value, as of the time the initial transaction is agreed to, of the maximum number of securities or other consideration that the issuer may be required to issue or pay in the future transaction,

(b) **Issuer Not Listed on Specified Markets** – no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

(c) **Distribution of Securities for Cash** – the transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(i) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(ii) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party,

(d) **Certain Transactions in the Ordinary Course of Business** – the transaction is

(i) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal or movable property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

(ii) a lease of real or immovable property or personal or movable property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to

the issuer than if the lease was with a person dealing at arm's length with the issuer and the existence of which has been generally disclosed,

(e) **Transaction Supported by Arm's Length Control Person** – the interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control person of the issuer and who, in the circumstances of the transaction

(i) is not also an interested party,

(ii) is at arm's length to the interested party, and

(iii) supports the transaction,

(f) **Bankruptcy, Insolvency, Court Order** –

(i) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(A) bankruptcy or insolvency law, or

(B) section 191 of the CBCA, any successor to that section, or equivalent legislation of a jurisdiction,

(ii) the court is advised of the requirements of this Instrument regarding formal valuations for related party transactions, and of the provisions of this paragraph (f), and

(iii) the court does not require compliance with section 5.4,

(g) **Financial Hardship** –

(i) the issuer is insolvent or in serious financial difficulty,

(ii) the transaction is designed to improve the financial position of the issuer,

(iii) paragraph (f) is not applicable,

(iv) the issuer has one or more independent directors in respect of the transaction, and

(v) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(A) subparagraphs (i) and (ii) apply, and

(B) the terms of the transaction are reasonable in the circumstances of the issuer,

(h) **Asset Resale** –

(i) the subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

(A) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

(B) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction, and

(ii) the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section 6.2,

(i) **Non-redeemable Investment Fund** – the issuer is a non-redeemable investment fund that

(i) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(ii) at the time of publicly announcing the related party transaction, publicly disseminates the net asset value of its securities as of the business day before the announcement,

(j) **Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority** – the transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if all of the following conditions are satisfied:

(i) the transaction does not and will not have any adverse tax or other consequences to the issuer, the person resulting from the combination, or beneficial owners of affected securities generally,

(ii) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the person resulting from the combination,

(iii) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(iv) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the person resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,

(v) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

5.6 Minority Approval – An issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement

(1) Subject to subsections (2), (3), (4) and (5), section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

(a) **Fair Market Value Not More Than 25 Per Cent of Market Capitalization** – the circumstances described in paragraph (a) of section 5.5,

(b) **Fair Market Value Not More Than $2,500,000** – Distribution of Securities for Cash – the circumstances described in paragraph (c) of section 5.5, if

(i) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

(ii) at the time the transaction is agreed to, neither the fair market value of the securities to be distributed in the transaction nor the consideration to be received for those securities, insofar as the transaction involves interested parties, exceeds $2,500,000,

(iii) the issuer has one or more independent directors in respect of the transaction who are not employees of the issuer, and

(iv) at least two-thirds of the directors described in subparagraph (iii) approve the transaction,

(c) **Other Transactions Exempt from Formal Valuation** – the circumstances described in paragraphs (d), (e) and (j) of section 5.5,

(d) **Bankruptcy, Insolvency, Court Order** – the circumstances described in subparagraph (f)(i) of section 5.5, if the court is advised of the requirements of this Instrument regarding minority approval for related party transactions, and of the provisions of this paragraph, and the court does not require compliance with section 5.6,

(e) **Financial Hardship** – the circumstances described in paragraph (g) of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities,

(f) **Loan to Issuer, No Equity or Voting Component** –

(i) the transaction is a loan, or the creation of a credit facility, that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

(A) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

(B) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer,

(ii) and for this purpose, any amendment to the terms of a loan or credit facility is deemed to create a new loan or credit facility,

(g) **90 Per Cent Exemption** – one or more persons that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

(i) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(ii) if an appraisal remedy referred to in subparagraph (i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in section 190 of the CBCA and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.

(2) Despite subparagraph (a)(iii) of section 5.5, if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemptions in paragraphs (a) and (b) of subsection (1), require minority approval under this Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for those exemptions are met.

(3) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph (f) of subsection (1) does not apply, the fair market value tests for the exemptions in paragraphs (a) and (b) of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves interested parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.

(4) Subparagraphs (a)(i), (iii) and (iv) of section 5.5 apply to paragraph (b) of subsection 5.7(1) with appropriate modifications.

(5) If there are two or more classes of affected securities, paragraph (g) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1 Independence and Qualifications of Valuator

(1) Every formal valuation required by this Instrument for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.

(2) It is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.

(3) A valuator is not independent of an interested party in connection with a transaction if

(a) the valuator is an associated or affiliated entity or issuer insider of the interested party,

(b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction,

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction,

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group,

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transaction and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation, or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entity of the valuator.

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

6.2 Disclosure Regarding Valuator – An issuer or offeror required to obtain a formal valuation for a transaction shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent,

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence,

(c) a description of the compensation paid or to be paid to the valuator,

(d) a description of any other factors relevant to a perceived lack of independence of the valuator,

(e) the basis for determining that the valuator is qualified, and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).

6.3 Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid,

(b) the affected securities, in the case of a business combination,

(c) any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraph (a) or (b), and

(d) the non-cash assets involved in a related party transaction.

(2) A formal valuation of non-cash consideration or assets referred to in paragraph (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market,

(b) the person that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed,

(c) in the case of an insider bid, issuer bid or business combination

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required, and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs (c)(i) and (ii) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.

6.4 Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.

(2) A person preparing a formal valuation under this Instrument shall

(a) prepare the formal valuation in a diligent and professional manner,

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed,

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b),

(d) in determining the fair market value of offeree securities or affected securities, not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest, and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

6.5 Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues,

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so,

(c) indicates an address where a copy of the formal valuation is available for inspection, and

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

6.6 Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders, or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7 Valuator's Consent – An issuer or offeror required to obtain a formal valuation shall

(a) obtain the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained, and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

We refer to the formal valuation dated •, which we prepared for (indicate name of the person) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the

filing of the formal valuation with the securities regulatory authority and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.

6.8 Disclosure of Prior Valuation

(1) A person required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction,

(b) indicate an address where a copy of the prior valuation is available for inspection, and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this Instrument, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person required to disclose the prior valuation,

(b) the prior valuation is not reasonably obtainable by the person required to disclose it, irrespective of any obligations of confidentiality, and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).

6.9 Filing of Prior Valuation – A person required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.

6.10 Consent of Prior Valuator Not Required – Despite sections 2.15 and 2.21 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, sections 94.7 and 96.1 of the *Securities Act*, a person required to disclose a prior valuation under this Instrument is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.

PART 7 INDEPENDENT DIRECTORS

7.1 Independent Directors

(1) For the purposes of this Instrument, it is a question of fact as to whether a director of an issuer is independent.

(2) A director of an issuer is not independent in connection with a transaction if the director

(a) is an interested party in the transaction,

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer,

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer,

(d) has a material financial interest in an interested party or an affiliated entity of an interested party, or

(e) would reasonably be expected to receive a benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an

interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer.

(3) A member of an independent committee for a transaction to which this Instrument applies shall not receive any payment or other benefit from an issuer, an interested party or a successor to any of them that is contingent upon the completion of the transaction.

(4) For the purposes of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1 General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

(2) In determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or senior officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer,

(b) an interested party,

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more persons that are neither interested parties nor issuer insiders of the issuer, or

(d) a joint actor with a person referred to in paragraph (b) or (c) in respect of the transaction.

8.2 Second Step Business Combination – Despite subsection 8.1(2), the votes attached to securities acquired under a bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid,

(b) the security holder that tendered the securities to the bid was not

(i) a direct or indirect party to any connected transaction to the bid, or

(ii) entitled to receive, directly or indirectly, in connection with the bid

(A) consideration per offeree security that was not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities,

(c) the business combination is being effected by the offeror that made the bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(d) the business combination is completed no later than 120 days after the date of expiry of the bid,

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the bid, and

(f) the disclosure document for the bid

(i) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) disclosed the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified the holders of securities specified in subparagraph (iv) and set out their individual holdings,

(vi) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

(vii) described the expected tax consequences of both the bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(viii) disclosed that the tax consequences of the bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

PART 9 EXEMPTION

9.1 Exemption

(1) In Québec, the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption. This exemption is granted under section 263 of the *Securities Act* (R.S.Q., C. V-1).

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

PART 10 EFFECTIVE DATE

10.1 Effective Date – This Instrument comes into force on February 1, 2008.

COMPANION POLICY 61-101CP
TO MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

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COMPANION POLICY 61-101CP
TO MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

PART 1 GENERAL

1.1 General – The Autorité des marchés financiers and the Ontario Securities Commission (or "we") regard it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. We are of the view that issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and that the fulfillment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

We do not consider that the types of transactions covered by this Instrument are inherently unfair. We recognize, however, that these transactions are capable of being abusive or unfair, and have made the Instrument to address this.

This Policy expresses our views on certain matters related to the Instrument.

PART 2 INTERPRETATION

2.1 Equal Treatment of Security Holders

(1) **Security Holder Choice** – The definitions of business combination, collateral benefit and interested party, as well as other provisions in the Instrument, include the concept of identical treatment of security holders in a transaction. For the purposes of the Instrument, if security holders have an identical opportunity under a transaction, then they are considered to be treated identically. For example, if under the terms of a business combination, each security holder has the choice of receiving, for each affected security, either $10 in cash or one common share of ABC Co., we regard the security holders as having identical entitlements in amount and form, and as receiving identical treatment, even though they may not all make the same choice. This interpretation also applies where the Instrument refers to consideration that is "at least equal in value" and "in the same form", such as in the provisions on second step business combinations.

(2) **Multiple Classes of Equity Securities –** The definitions of business combination and interested party, and the provisions on second step business combinations in section 8.2 of the Instrument, refer to circumstances where an issuer carrying out a business combination or related party transaction has more than one class of equity securities. The Instrument's treatment of these transactions depends on whether the entitlements of the holders of one class under the transaction are greater than those of the holders of the other classes in relation to the voting and financial participating interests in the issuer represented by the respective securities.

For example: An issuer has outstanding subordinate voting shares carrying one vote per share, and multiple voting shares carrying ten votes per share, with the shares of the two classes otherwise carrying identical rights. Under the terms of a business combination, holders of the subordinate voting shares will receive $10 per share. For the multiple voting shareholders to be regarded as not being entitled to greater consideration than the subordinate voting shareholders under the Instrument, the multiple voting shareholders must receive no more than $10 per share. As a second example: An issuer has the same share structure as the issuer in the first example. Under the terms of a business combination, subordinate voting shareholders will receive, for each subordinate voting Share, $10 and one subordinate voting share of a successor issuer, carrying one vote per share. For the multiple voting shareholders to be regarded as not being entitled to greater consideration than the subordinate voting shareholders under the Instrument, the multiple voting shareholders must receive, for each multiple voting share, no more than $10 and one multiple voting share of the successor issuer, carrying no more than ten votes per share and otherwise carrying no greater rights than those of the subordinate voting shares of the successor issuer.

(3) **Related Party Holding Securities of Other Party to Transaction** – The Instrument sets out specific criteria for determining related party and interested party status. Without limiting the application of those criteria, a related party of an issuer is not considered to be treated differently from other security holders of the issuer in a transaction, or to receive a collateral benefit, solely by reason of being a security holder of another party to the transaction. For example, if ABC Co. proposes to amalgamate with XYZ Co., the fact that a director of ABC Co., who is not a control person of ABC Co., owns common shares of XYZ Co. (but less than 50 per cent) will not, in and of itself, cause the amalgamation to be considered a business combination for ABC Co. under the Instrument.

(4) **Consolidation of Securities** – One of the methods that may be used to effect a business combination is a consolidation of an issuer's securities at a ratio that eliminates the entire holdings of most holders of affected securities, through the elimination of post-consolidated fractional interests. Where this or a similar method is used, the security holders whose entire holdings are not eliminated are not considered to be treated identically to the general body of security holders under the Instrument.

(5) **Principle of Equal Treatment in Business Combinations** – The Instrument contemplates that a related party of an issuer might not be treated identically to all other security holders in the context of a business combination in which a person other than that related party acquires the issuer. There are provisions in the Instrument, including the minority approval requirement, that are intended to address this circumstance. Despite these provisions, we are of the view that, as a general principle, security holders should be treated equally in the context of a business combination, and that differential treatment is only justified if its benefits to the general body of security holders outweigh the principle of equal treatment. While we will generally rely on an issuer's review and approval process, in combination with the provisions of the Instrument, to achieve fairness for security holders, we may intervene if it appears that differential treatment is not reasonably justified. Giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.

2.2 Equity Participation by a Related Party – If a related party of an issuer is provided with the opportunity to maintain or acquire an equity interest in the issuer, or in a successor to the business of the issuer, upon completion of a bid or business combination, the following provisions of the Instrument may be relevant.

If the equity interest will be derived solely through securities-based compensation for services as an employee, director or consultant, the provisions of the Instrument regarding collateral benefits may be applicable. In other cases, the acquisition of the equity interest or opportunity to maintain an equity interest may be a connected transaction. In either of these instances, votes attaching to the securities owned by the related party may be excluded from the minority vote required for a business combination, including a second step business combination following a bid. We are of the view that the employee compensation exemptions to the collateral benefit and connected transaction definitions do not generally apply to an issuance of securities in the issuer or a successor issuer upon completion of the transaction.

Without limiting the application of the definition of joint actor, we may consider a related party to be a joint actor with the offeror in a bid, or with the acquirer in a business combination, if the related party becomes a control person of the issuer or a successor issuer upon completion of the transaction or if the related party, whether alone or with joint actors, beneficially owns securities with more than 20 per cent of the voting rights. We may also consider a related party's continuing equity interest in the issuer or a successor issuer upon completion of the transaction in making an assessment of joint actor status generally. A joint actor characterization could cause a bid to be regarded as an insider bid, or an otherwise arm's length transaction to be a regarded as a business combination, that requires preparation of a formal valuation.

2.3 Direct or Indirect Parties to a Transaction

(1) The Instrument makes references to direct and indirect parties to a transaction in the definition of connected transactions and in subparagraph 8.2(b)(i) regarding minority approval for a second step business combination. For the purposes of the Instrument, a person is considered to be an indirect party if, for example, a direct party to the transaction is a subsidiary entity, nominee or agent of the person. A person is not an indirect party merely because it negotiates or approves the transaction on behalf of a party, holds securities of a party or agrees to support the transaction in the capacity of a security holder of a party.

(2) For the purposes of the Instrument, we do not consider a person to be a direct or indirect party to a business combination solely because the person receives pro rata consideration in its capacity as a security holder of the issuer carrying out the business combination.

2.4 Amalgamations – Under the Instrument, an amalgamation may be a business combination, related party transaction or neither, depending on the circumstances. For example, an amalgamation is a business combination for an issuer if, as a consequence of the amalgamation, holders of equity securities of the issuer become security holders of the amalgamated entity, unless an exception in one of the lettered paragraphs in the definition of business combination applies. An amalgamation is a related party transaction for an issuer rather than a business combination if, for example, a wholly-owned subsidiary entity of the issuer amalgamates with a related party of the issuer, leaving the equity securities of the issuer unaffected.

2.5 Transactions Involving More than One Reporting Issuer – The characterization of a transaction or the availability of a valuation or minority approval exemption under the Instrument must be considered individually for each reporting issuer involved in the transaction. For example, an amalgamation may be a downstream transaction for one party and

a business combination for the other, in which case the latter party is the only party to whom the requirements of the Instrument may apply.

2.6 Previous Arm's Length Negotiations Exemption

(1) For the purposes of the formal valuation exemptions based on previous arm's length negotiations in paragraph (b) of subsection 2.4(1) and paragraph (b) of subsection 4.4(1) of the Instrument for insider bids and business combinations, respectively, the arm's length relationship must be between the selling security holder and all persons or companies that negotiated with the selling security holder.

(2) We note that the previous arm's length negotiations exemption is based on the view that those negotiations can be a substitute for a valuation. An important requirement for the exemption to be available is that the offeror or proponent of the business combination, as the case may be, engages in "reasonable inquiries" to determine whether various circumstances exist. In our view, if this requirement cannot be satisfied through receipt of representations of the parties directly involved or some other suitable method, the offeror or proponent of the transaction is not entitled to rely on this exemption.

2.7 Connected Transactions

(1) "Connected transactions" is a defined term in the Instrument, and reference is made to connected transactions in a number of parts of the Instrument. For example, subparagraph (a)(iii) of section 5.5 of the Instrument requires connected transactions to be aggregated, in certain circumstances, for the purpose of determining the availability of the formal valuation exemption for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization. In other circumstances, it is possible for an issuer to rely on an exemption for each of two or more connected transactions. However, we may intervene if we believe that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the Instrument.

(2) One method of acquiring all the securities of an issuer is through a plan of arrangement or similar process comprised of a series of two or more interrelated steps. The series of steps is the "transaction" for the purposes of the definition of business combination. However, a related party transaction that is carried out in conjunction with a business combination, and that is not simply one of the procedural steps in implementing the acquisition of the affected securities in the business combination, is subject to the Instrument's requirements for related party transactions. This applies where, for example, a related party buys some of the issuer's assets that the acquirer in the business combination does not want.

(3) An agreement, commitment or understanding that a security holder will tender to a bid or vote in favour of a transaction is not, in and of itself, a connected transaction to the bid or to the transaction for purposes of the Instrument.

2.8 Time of Agreement – A number of provisions in the Instrument refer to the time a business combination or related party transaction is agreed to. This should be interpreted as the time the issuer first makes a legally binding commitment to proceed with the transaction, subject to any conditions such as security holder approval. Where the issuer does not technically negotiate the transaction with another party, such as in the case of a share consolidation, the time the transaction is agreed to should be interpreted as the time at which the issuer's board of directors determines to proceed with the transaction, subject to any conditions.

2.9 "Acquire the Issuer" – In some definitions and elsewhere in the Instrument, reference is made to a transaction in which a related party would "directly or indirectly acquire the issuer … through an amalgamation, arrangement or otherwise, whether alone or with joint actors". This refers to the acquisition of all of the issuer, not merely the acquisition of a control position. For example, a related party "acquires" an issuer when it acquires all of the securities of the issuer that it does not already own, even if that related party held a control position in the issuer prior to the transaction.

PART 3 MINORITY APPROVAL

3.1 Meeting Requirement – The definition of minority approval and subsections 4.2(2) and 5.3(2) of the Instrument provide that minority approval, if required, must be obtained at a meeting of holders of affected securities. The issuer may be able to demonstrate that holders of a majority of the securities that would be eligible to be voted at a meeting would vote in favour of the transaction under consideration. In this circumstance, the regulator or the securities regulatory authority will consider granting an exemption under section 9.1 of the Instrument from the requirement to hold a meeting, conditional on security holders being provided with disclosure similar to that which would be available to them if a meeting were held.

3.2 Second Step Business Combination Following an Unsolicited Take-over Bid – Section 8.2 of the Instrument allows the votes attached to securities acquired under a bid to be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if certain conditions are met. One of the conditions is that the security holder that tendered the securities in the bid not receive an advantage in connection with the bid, such as a collateral benefit, that was not available to other security holders. There may be circumstances where this condition could cause difficulty for an offeror who wishes to acquire all of an issuer through a business combination following a bid that was unsolicited by the issuer. For example, in order to establish that a benefit received by a tendering security holder is not a collateral benefit under the Instrument, the offeror may need the cooperation of an independent committee of the offeree issuer during the bid. This cooperation may not be forthcoming if the bid is unfriendly. In this type of circumstance, the fact that the bid was unsolicited would normally be a factor the regulator or the securities regulatory authority would take into account in considering whether exemptive relief should be granted to allow the securities to be voted.

3.3 Special Circumstances – As the purpose of the Instrument is to ensure fair treatment of minority security holders, abusive minority tactics in a situation involving a minimal minority position may cause the regulator or the securities regulatory authority to grant an exemption from the requirement to obtain minority approval. Where an issuer has more than one class of equity securities, exemptive relief may also be appropriate if the Instrument's requirement of separate minority approval for each class could result in unfairness to security holders who are not interested parties, or if the policy objectives of the Instrument would be accomplished by the exclusion of an interested party's votes in one or more, but not all, of the separate class votes.

PART 4 DISCLOSURE

4.1 Insider Bids – Disclosure – Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form 62-104F1 *Take-Over Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F1 *Take-Over Bid Circular* of OSC Rule 62-504 *Take Over Bids and Issuer Bids*, and by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take Over Bids and Issuer Bids*, appropriately modified. In our view, Form 62-104F2 and in Ontario, Form 62-504F2, disclosure would generally include, in addition to Form 62-104F1 and in Ontario, Form 62-504F1, disclosure, disclosure for the following items, with necessary modifications, in the context of an insider bid:

1. Item 9 – Purpose of the bid
2. Item 13 – Acceptance of issuer bid
3. Item 14 – Benefits from the bid
4. Item 16 – Other benefits
5. Item 17 – Arrangements between issuer and security holders
6. Item 18 – Previous purchases and sales
7. Item 20 – Valuation
8. Item 23 – Previous distribution
9. Item 24 – Dividend policy
10. Item 25 – Tax consequences
11. Item 26 – Expenses of bid

4.2 Business Combinations and Related Party Transactions – Disclosure – Paragraphs 4.2(3)(a) and 5.3(3)(a) of the Instrument require in the information circulars for a business combination and a related party transaction, respectively, the disclosure required by Form 62-104F2, and in Ontario, Form 62-504F2, to the extent applicable and with necessary modifications. In our view, Form 62-104F2, and in Ontario, Form 62-504F2, disclosure would generally include disclosure for the following items, with necessary modifications, in the context of those transactions:

1. Item 4 – Consideration
2. Item 9 – Purpose of the bid
3. Item 10 – Trading in securities to be acquired
4. Item 11 – Ownership of securities of issuer
5. Item 12 – Commitments to acquire securities of issuer
6. Item 13 – Acceptance of issuer bid
7. Item 14 – Benefits from the bid
8. Item 15 – Material changes in the affairs of issuer
9. Item 16 – Other benefits
10. Item 17 – Arrangements between issuer and security holders
11. Item 18 – Previous purchases and sales
12. Item 19 – Financial statements
13. Item 20 – Valuation

14. Item 21 – Securities of issuer to be exchanged for others
15. Item 22 – Approval of issuer bid circular
16. Item 23 – Previous distribution
17. Item 24 – Dividend policy
18. Item 25 – Tax consequences
19. Item 26 – Expenses of bid
20. Item 29 – Other material information
21. Item 30 – Solicitations

PART 5 FORMAL VALUATIONS

5.1 General

(1) The Instrument requires formal valuations in a number of circumstances. We are of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of a valuation does not by itself fulfil this requirement.

(2) The disclosure standards for formal valuations in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators each generally represent a reasonable approach to meeting the applicable legal requirements. Specific disclosure standards, however, cannot be construed as a substitute for the professional judgment and responsibility of the valuator and, on occasion, additional disclosure may be necessary.

(3) An issuer that is required to obtain a formal valuation, or the offeree issuer in the case of an insider bid, should work in cooperation with the valuator to ensure that the requirements of the Instrument are satisfied. At the valuator's request, the issuer should promptly furnish the valuator with access to the issuer's management and advisers, and to all material information in the issuer's possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information on which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts, projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions on which it is based, and adjust the information accordingly.

(4) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances. In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator.

(5) Subsection 2.3(2) of the Instrument provides that in the context of an insider bid, an independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to, determine who the valuator will be and supervise the preparation of the formal valuation. Although the subsection also requires the independent committee to use its best efforts to ensure that the valuation is completed and provided to the offeror in a timely manner, we are aware that an independent committee could attempt to use the subsection to delay or impede an insider bid viewed by the committee as unfriendly. In a situation where an offeror is of the view that an independent committee is not acting in a timely manner in having the formal valuation prepared, the offeror may seek relief under section 9.1 of the Instrument from the requirement that the offeror obtain a valuation.

(6) Similarly, in circumstances where an independent committee is of the view that a bid that has been announced will not actually be made or that the bid is not being made in good faith, the independent committee may apply for relief from the requirements of subsection 2.3(2) of the Instrument.

(7) Requirements in securities legislation relating to forward-looking information do not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.

5.2 Independent Valuators – While, except in certain prescribed situations, the Instrument provides that it is a question of fact as to whether a valuator (which for the purposes of this section includes a person providing a liquidity opinion) is independent, situations have been identified in the past that raise serious concerns for us. These situations, which are set out below, must be assessed for materiality by the board or committee responsible for choosing the valuator, and disclosed in the disclosure document for the transaction. In determining the independence of the valuator from an interested party, relevant factors may include whether

(a) the valuator or an affiliated entity of the valuator has a material financial interest in future business under an agreement, commitment or understanding involving the issuer, the interested party or an associated or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator was first contacted for the purpose of the formal valuation or opinion, the valuator or an affiliated entity of the valuator

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of the interested party, or an associated or affiliated entity of the interested party, other than the issuer,

(ii) had a material involvement in an evaluation, appraisal or review of the financial condition of the issuer, or an associated or affiliated entity of the issuer, if the evaluation, appraisal or review was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iii) acted as a lead or co-lead underwriter of a distribution of securities by the interested party, or acted as a lead or co-lead underwriter of a distribution of securities by the issuer if the retention of the underwriter was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iv) had a material financial interest in a transaction involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in a transaction involving the issuer other than by virtue of performing the services referred to in subparagraph (b)(ii) or (b)(iii), or

(c) the valuator or an affiliated entity of the valuator is

(i) a lead or co-lead lender or manager of a lending syndicate in respect of the transaction in question, or

(ii) a lender of a material amount of indebtedness in a situation where the interested party or the issuer is in financial difficulty, and the transaction would reasonably be expected to have the effect of materially enhancing the lender's position.

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(2)(d), 3.2(d), 4.2(3)(e), 5.2(1)(e) and 5.3(3)(e) of the Instrument require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the Instrument should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the

directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the Instrument are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, we are of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing our interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the Instrument only mandates an independent committee in limited circumstances, we are of the view that it generally would be appropriate for issuers involved in a material transaction to which the Instrument applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, we also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in our view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in our view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

(8) We recognize that directors who serve on a special committee or independent committee must be adequately compensated for their time and effort. However, members of the committee should ensure that compensation for serving on the committee will not compromise their independence. Subsection 7.1(3) of the Instrument prohibits members of an independent committee reviewing a transaction from receiving any payment that is contingent on completion of the transaction. We are of the view that the compensation of committee members should ideally be set when the committee is created and be based on fixed sum payments or the work involved.

~~**ONTARIO SECURITIES COMMISSION RULE 61-501**~~

~~***INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONSAND RELATED PARTY***~~**MULTILATERAL INSTRUMENT 61-101**

PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

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MULTILATERAL INSTRUMENT 61-101
~~**ONTARIO SECURITIES COMMISSION RULE 61-501**~~
~~***INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS***~~
~~***AND RELATED PARTY***~~***PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS***

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions ~~and Interpretations -~~ In this ~~Rule~~Instrument

"affected security" means

(a) for a business combination of an issuer, an equity security of the issuer in which the interest of a security holder would be terminated as a consequence of the transaction, and

(b) for a related party transaction of an issuer, an equity security of the issuer;

"affiliated entity": a person ~~or company~~ is considered to be an affiliated entity of another person ~~or company~~ if one is ~~a~~the subsidiary entity of the other or if both are subsidiary entities of the same person ~~or company~~;

"arm's length" has the meaning ascribed to that term in section 251 of the *Income Tax Act* (Canada), or any successor to that legislation, and, in addition to that meaning, ~~an entity~~a person is deemed not to deal at arm's length with a related party of ~~the entity~~that person;

"associated entity", when used to indicate a relationship with a person, means

(a) ~~"associated entity", where used to indicate a relationship with an entity, has the meaning ascribed to the term "associate" in subsection 1(1) of the Act and also includes any person of which the entity~~an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities ~~carrying~~entitling the person to more than 10 ~~per cent~~% of the voting rights attached to ~~all the~~ outstanding ~~voting securities of the person;~~securities of the issuer,

(b) any partner of the person,

(c) any trust or estate in which the person has a substantial beneficial interest or in respect of which a person serves as trustee or in a similar capacity,

(d) a relative of that person, including

(i) the spouse, or

(ii) a relative of the person's spouse

if the relative has the same home as that person;

"beneficially owns" includes direct or indirect beneficial ownership~~, and~~ of a security holder;

~~(a) despite subsections 1(5) and 1(6) of the Act, a person or company is not deemed to beneficially own securities that are beneficially owned by its affiliated entity, unless the affiliated entity is also its subsidiary entity, and~~

~~(b) for the purposes of the definitions of control block holder and related party, section 90 of the Act applies in determining beneficial ownership of securities;~~

"bid" means a take-over bid or an issuer bid to which Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* applies, and in Ontario, a formal take-over bid or formal issuer bid as defined in section 89(1) of the *Securities Act*;

"bona fide lender" means a person ~~or company~~ that

(a) is an issuer insider of an issuer solely through the holding of, or the exercise of control or direction over, securities used as collateral for a debt under a written agreement entered into by the person ~~or company~~ as a lender, assignee, transferee or participant,

(b) is not yet legally entitled to dispose of the securities for the purpose of applying proceeds of realization in repayment of the secured debt, and

(c) was not a related party of the issuer at the time the agreement referred to in paragraph (a) was entered into;

"business combination" means, for an issuer, an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include

(a) ~~(a)~~ an acquisition of an equity security of the issuer under a statutory right of compulsory acquisition or, if the issuer is not a corporation, under provisions substantially equivalent to those comprising section ~~188~~206 of the ~~OBCA~~CBCA,

(b) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,

(c) a termination of a holder's interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership,

(d) a downstream transaction for the issuer, or

(e) a transaction in which no person ~~or company~~ that is a related party of the issuer at the time the transaction is agreed to

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the transaction, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per equity security that is not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"CBCA" means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;

"class" includes a series of a class;

"collateral benefit", for a transaction of an issuer or for a ~~formal~~ bid for securities of an issuer, means any benefit that a related party of the issuer is entitled to receive, directly or indirectly, as a consequence of the transaction or bid, including, without limitation, an increase in salary, a lump sum payment, a payment for surrendering securities, or other enhancement in benefits related to past or future services as an employee, director or consultant of the issuer or of another ~~entity~~person, regardless of the existence of any offsetting costs to the related party or whether the benefit is provided, or agreed to, by the issuer, another party to the transaction or the offeror in the bid, but does not include

(a) a payment or distribution per equity security that is identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(b) an enhancement of employee benefits resulting from participation by the related party in a group plan, other than an incentive plan, for employees of a successor to the business of the issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the issuer who hold positions of a similar nature to the position held by the related party, or

(c) a benefit, not described in paragraph (b), that is received solely in connection with the related party's services as an employee, director or consultant of the issuer, of an affiliated entity of the issuer or of a successor to the business of the issuer, if

(i) the benefit is not conferred for the purpose, in whole or in part, of increasing the value of the consideration paid to the related party for securities relinquished under the transaction or bid,

(ii) the conferring of the benefit is not, by its terms, conditional on the related party supporting the transaction or bid in any manner,

(iii) full particulars of the benefit are disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid, and

(iv) (A) at the time the transaction is agreed to or the bid is publicly announced, the related party and its associated entities beneficially own or exercise control or direction over less than one per cent of the outstanding securities of each class of equity securities of the issuer, or

(B) if the transaction is a business combination for the issuer or a ~~formal~~ bid for securities of the issuer,

(I) the related party discloses to an independent committee of the issuer the amount of consideration that the related party expects it will be beneficially entitled to receive, under the terms of the transaction or bid, in exchange for the equity securities beneficially owned by the related party,

(II) the independent committee, acting in good faith, determines that the value of the benefit, net of any offsetting costs to the related party, is less than five per cent of the value referred to in subclause (I), and

(III) the independent committee's determination is disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid;

"connected transactions" means two or more transactions that have at least one party in common, directly or indirectly, other than transactions related solely to services as an employee, director or consultant, and

1. are negotiated or completed at approximately the same time, or

2. the completion of at least one of the transactions is conditional on the completion of each of the other transactions~~,~~;

~~other than transactions related solely to services as an employee, director or consultant;~~

"consultant" means, for an issuer, a person, other than an employee or senior officer of the issuer or of an affiliated entity of the issuer, that

(a) is engaged to provide services to the issuer or an affiliated entity of the issuer, other than services provided in relation to a distribution,

(b) provides the services under a written contract with the issuer or an affiliated entity of the issuer, and

(c) spends or will spend a significant amount of time and attention of the affairs and business of the issuer or an affiliated entity or the issuer

and includes, for an individual consultant a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner;

~~"consultant has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 45-105 – *Trades to Employees, Senior Officers, Directors, and Consultants*;~~

~~"control block holder" of an entity means a person or company, other than a bona fide lender, that, whether alone or with joint actors, beneficially owns or exercises control or direction over securities of the entity sufficient to affect materially the control of the entity, and in the absence of evidence to the contrary, beneficial ownership or control or direction over voting securities to which are attached more than 20 per cent of the votes attached to all the outstanding voting securities of the entity is considered sufficient to affect materially the control of the entity;~~

~~"controlled": for the purposes only of the definition of "subsidiary entity", an entity is considered to be controlled by a person or company if~~

~~(a) in the case of an entity that has directors~~

~~(i) the person or company beneficially owns or exercises control or direction over voting securities of the entity carrying more than 50 per cent of the votes for the election of directors, and~~

~~(ii) the votes carried by the securities entitle the holder to elect a majority of the directors of the entity,~~

~~(b) in the case of a partnership or other entity that does not have directors, other than a limited partnership, the person or company beneficially owns or exercises control or direction over more than 50 per cent of the voting interests in the partnership or other entity, or~~

~~(c) in the case of an entity that is a limited partnership, the person or company is the general partner or controls the general partner within the meaning of paragraph (a) or (b);~~

"convertible" means convertible into, exchangeable for, or carrying the right or obligation to purchase or otherwise acquire or cause the purchase or acquisition of, another security;

"director", for an issuer that is a limited partnership, includes a director of the general partner of the issuer, except for the purposes of the ~~definition~~interpretation of "~~controlled~~control";

"disclosure document" means

(a) for a take-over bid ~~(~~including an insider bid~~)~~, a take-over bid circular sent to holders of offeree securities,

(b) for an issuer bid, an issuer bid circular sent to holders of offeree~~ securities,(c) for a business combination, an information circular sent to holders of affected securities, or, if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected~~ securities, and

(~~d~~c) for a business combination or a related party transaction,

(i) an information circular sent to holders of affected securities,

(ii) if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, or

(iii) if no information circular or other document referred to in subparagraph (ii) is required, a material change report filed for the transaction;

"downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to

(a) the issuer is a control ~~block holder~~person of the related party, and

(b) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction;

~~"entity" means a person or company;~~"equity security" ~~has the meaning ascribed to that term in subsection 89(1) of the Act;~~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;

"fair market value" means, except as provided in paragraph 6.4(2)(d), the monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act;

~~"formal bid" has the meaning ascribed to that term in subsection 89(1) of the Act;~~

"formal valuation" means a valuation prepared in accordance with Part 6;

"freely tradeable" means, for securities, that

(a) the securities are transferable,

(b) the securities are not subject to any escrow requirements,

(c) the securities do not form part of the holdings of any control person ~~or company or combination of persons or companies referred to in paragraph (c) of the definition of "distribution" in the Act~~,

(d) the securities are not subject to any cease trade order imposed by a ~~Canadian~~ securities regulatory authority,

(e) all hold periods imposed by ~~Canadian~~ securities legislation before the securities can be traded without a prospectus or in reliance on a prospectus exemption have expired, and

(f) any period of time imposed by ~~Canadian~~ securities legislation for which the issuer has to have been a reporting issuer in a jurisdiction before the securities can be traded without a prospectus or in reliance on a prospectus exemption has passed;

"incentive plan" means a group plan that provides for stock options or other equity incentives, profit sharing, bonuses, or other performance-based payments;

~~"income trust" means a trust or other entity that issues securities that entitle the holders to net cash flows generated by another entity;~~

"independent committee" means, for an issuer, a committee consisting exclusively of one or more independent directors of the issuer;

"independent director" means, for an issuer in respect of a transaction or bid, a director who is independent as determined in section 7.1;

"independent valuator" means, for a transaction or bid, a valuator that is independent of all interested parties in the transaction, as determined in section 6.1;

"insider bid" means a take-over bid made by

(a) an issuer insider of the offeree issuer,

(b) an associated or affiliated entity of an issuer insider of the offeree issuer,

(c) an associated or affiliated entity of the offeree issuer,

(d) a person ~~or company~~ described in paragraph (a), (b) or (c) at any time within 12 months preceding the commencement of the bid, or

(e) a joint actor with a person ~~or company~~ referred to in paragraph (a), (b), (c) or (d);

"interested party" means

(a) for a take-over bid ~~(~~including an insider bid~~)~~, the offeror or a joint actor with the offeror,

(b) for an issuer bid

(i) the issuer, and

(ii) any control ~~block holder~~person of the issuer, or any person ~~or company~~ that would reasonably be expected to be a control ~~block holder~~person of the issuer upon successful completion of the issuer bid,

(c) for a business combination, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the business combination, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per affected security that is not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities, and

(d) for a related party transaction, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) is a party to the transaction, unless it is a party only in its capacity as a holder of affected securities and is treated identically to the general body of holders in Canada of securities of the same class on a per security basis, or

(ii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) a collateral benefit, or

(B) a payment or distribution made to one or more holders of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless the amount of that payment or distribution is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"issuer bid" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*;

"issuer insider" means, for an issuer

(a) a director or senior officer of the issuer,

(b) a director or senior officer of ~~an entity~~a person that is itself an issuer insider or subsidiary entity of the issuer, or

(c) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

~~(c) a person or company that beneficially owns or exercises control or direction over voting~~ securities of the issuer carrying more than 10~~ per cent~~% of the voting rights attached to all the issuer's outstanding voting securities~~ of the issuer~~;

"joint actors", when used to describe the relationship among two or more ~~entities~~persons, means persons ~~or companies~~ "acting jointly or in concert" as ~~defined in~~determined in accordance with section 1.9 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 91 of the *Securities Act*, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making a ~~formal~~ bid, or with a person~~ or company~~ involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;

"liquid market" means a market that meets the criteria specified in section 1.2;

"market capitalization" of an issuer means, for a transaction, the aggregate market price of all outstanding securities of all classes of equity securities of the issuer, the market price of the outstanding securities of a class being

(a) in the case of equity securities of a class for which there is a published market, the product of

(i) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no securities of the class were outstanding on that day, on the first business day after that day that securities of the class became outstanding, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections ~~183(1), (2) and (4) of the Regulation,~~1.11 (1), (2) and (3) of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, subsections 1.3 (1), (2) and (3) of Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids*,

(b) in the case of equity securities of a class for which there is no published market but that are currently convertible into a class of equity securities for which there is a published market, the product of

(i) the number of equity securities into which the convertible securities were convertible as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no convertible securities were outstanding or convertible on that day, on the first business day after that day that the convertible securities became outstanding or convertible, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections ~~183~~1.11 (1), (2) and ~~(3)(4)~~ of ~~the Regulation, and~~Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, subsections 1.3 (1), (2) and (3) of OSC Rule 62-504 *Take-Over Bids and Issuer Bids,* and

(c) in the case of equity securities of a class not referred to in paragraph (a) or (b), the amount determined by the issuer's board of directors in good faith to represent the fair market value of the outstanding securities of that class;

"minority approval" means, for a business combination or related party transaction of an issuer, approval of the proposed transaction by a majority of the votes as specified in Part 8, cast by holders of each class of affected securities at a meeting of security holders of that class called to consider the transaction;

~~"OBCA" means the *Business Corporations Act*;~~

"offeree issuer" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*;

"offeree security" means a security that is subject to a take-over bid or issuer bid;

"offeror" has the meaning ascribed to that term in ~~subsection~~section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*;

"person" in Ontario, includes

(a) an individual,

(b) a corporation,

(c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

(d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"prior valuation" means a valuation or appraisal of an issuer or its securities or material assets, whether or not prepared by an independent valuator, that, if disclosed, would reasonably be expected to affect the decision of a security holder to vote for or against a transaction, or to retain or dispose of affected securities or offeree securities, other than

(a) a report of a valuation or appraisal prepared by ~~an entity~~a person other than the issuer, if

(i) the report was not solicited by the issuer, and

(ii) the ~~entity~~person preparing the report did so without knowledge of any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(b) an internal valuation or appraisal prepared for the issuer in the ordinary course of business that has not been made available to, and has been prepared without the participation of

(i) the board of directors of the issuer, or

(ii) any director or senior officer of an interested party, except a senior officer of the issuer in the case of an issuer bid,

(c) a report of a market analyst or financial analyst that

(i) has been prepared by or for and at the expense of ~~an entity~~a person other than the issuer, an interested party, or an associated or affiliated entity of the issuer or an interested party, and

(ii) is either generally available to clients of the analyst or of the analyst's employer or of an associated or affiliated entity of the analyst's employer or, if not, is not based, so far as the ~~entity~~person required to disclose a prior valuation is aware, on any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(d) a valuation or appraisal prepared by ~~an entity or~~ a person or ~~company~~a person retained by ~~the entity~~that person, for the purpose of assisting the ~~entity~~person in determining the price at which to propose a transaction that resulted in the ~~entity~~person becoming an issuer insider, if the valuation or appraisal is not made available to any of the independent directors of the issuer, or

(e) a valuation or appraisal prepared by an interested party or ~~an entity~~a person retained by the interested party, for the purpose of assisting the interested party in determining the price at which to propose a transaction that, if pursued, would be an insider bid, business combination or related party transaction, if the valuation or appraisal is not made available to any of the independent directors of the issuer;

"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;

"related party" of an entity means a person ~~or company~~, other than a person that is solely a bona fide lender, that, at the relevant time and after reasonable inquiry, is known by the entity or a director or senior officer of the entity to be

(a) a control ~~block holder~~person of the entity,

(b) a person ~~or company~~ of which a person ~~or company~~ referred to in paragraph (a) is a control ~~block holder~~person,

(c) ~~(c)~~ a person ~~or company~~ of which the entity is a control ~~block holder~~person,

(d) ~~a person or company, other than a bona fide lender, that beneficially owns or exercises~~ a person that has

(i). beneficial ownership of, or control or direction over ~~voting~~, directly or indirectly, or

(ii). a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of the entity carrying more than 10 ~~per cent~~% of the voting rights attached to all the entity's outstanding voting securities ~~of the entity~~,

(e) a director or senior officer of

(i) the entity, or

(ii) a person ~~or company~~ described in any other paragraph of this definition,

(f) a person ~~or company~~ that manages or directs, to any substantial degree, the affairs or operations of the entity under an agreement, arrangement or understanding between the person ~~or company~~ and the entity, including the general partner of an entity that is a limited partnership, but excluding a person ~~or company~~ acting under bankruptcy or insolvency law,

(g) a person ~~or company~~ of which persons ~~or companies~~ described in any paragraph of this definition beneficially own, in the aggregate, more than 50 per cent of the securities of any outstanding class of equity securities, or

(h) an affiliated entity of any person ~~or company~~ described in any other paragraph of this definition;

"related party transaction" means, for an issuer, a transaction between the issuer and a person ~~or company~~ that is a related party of the issuer at the time the transaction is agreed to, whether or not there are also other parties to the transaction, as a consequence of which, either through the transaction itself or together with connected transactions, the issuer directly or indirectly

(a) purchases or acquires an asset from the related party for valuable consideration,

(b) purchases or acquires, as a joint actor with the related party, an asset from a third party if the proportion of the asset acquired by the issuer is less than the proportion of the consideration paid by the issuer,

(c) sells, transfers or disposes of an asset to the related party,

(d) sells, transfers or disposes of, as a joint actor with the related party, an asset to a third party if the proportion of the consideration received by the issuer is less than the proportion of the asset sold, transferred or disposed of by the issuer,

(e) leases property to or from the related party,

(f) acquires the related party, or combines with the related party, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(g) issues a security to the related party or subscribes for a security of the related party,

(h) amends the terms of a security of the issuer if the security is beneficially owned, or is one over which control or direction is exercised, by the related party, or agrees to the amendment of the terms of a security of the related party if the security is beneficially owned by the issuer or is one over which the issuer exercises control or direction,

(i) assumes or otherwise becomes subject to a liability of the related party,

(j) borrows money from or lends money to the related party, or enters into a credit facility with the related party,

(k) releases, cancels or forgives a debt or liability owed by the related party,

(l) materially amends the terms of an outstanding debt or liability owed by or to the related party, or the terms of an outstanding credit facility with the related party, or

(m) ~~(m)~~ provides a guarantee or collateral security for a debt or liability of the related party, or materially amends the terms of the guarantee or security;

"senior officer"~~,~~ means the chair or a vice-chair of the board of directors, a president, a vice-president, the secretary, the treasurer or the general manager of an issuer or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and for an issuer that is a limited partnership, includes a senior officer of the general partner of the issuer;

"subsidiary entity"~~: a person or company is considered to be a subsidiary entity of~~ means a person that is controlled directly or indirectly by another person ~~or company if~~and includes a subsidiary of that subsidiary;

~~(a) it is controlled by~~

~~(i) that other,~~

~~(ii) that other and one or more persons or companies, each of which is controlled by that other, or~~

~~(iii) two or more persons or companies, each of which is controlled by that other, or~~

"take-over bid" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, section 89(1) of the *Securities Act*; and

~~(b) it is a subsidiary entity of a person or company that is that other's subsidiary entity; and~~

"wholly-owned subsidiary entity": a person ~~or company~~ is considered to be a wholly-owned subsidiary entity of an issuer if the issuer owns, directly or indirectly, all the voting and equity securities and securities convertible into voting and equity securities of the person ~~or company~~.

1.2 Liquid Market

(1) For the purposes of this ~~Rule~~Instrument, a liquid market in a class of securities of an issuer in respect of a transaction exists at a particular time only~~(a)~~ if

(~~i~~a) there is a published market for the class of securities,

(~~ii~~i) during the period of 12 months before the date the transaction is agreed to in the case of a business combination, or 12 months before the date the transaction is publicly announced in the case of an insider bid or issuer bid

(A) the number of outstanding securities of the class was at all times at least 5,000,000, excluding securities beneficially owned, or over which control or direction was exercised, by related parties and securities that were not freely tradeable,

(B) the aggregate trading volume of the class of securities on the published market on which the class was principally traded was at least 1,000,000 securities,

(C) there were at least 1,000 trades in securities of the class on the published market on which the class was principally traded, and

(D) the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000, and

(ii) ~~(iii)~~ the market value of the class of securities on the published market on which the class was principally traded, as determined in accordance with subsection (2), was at least $75,000,000 for the calendar month preceding the calendar month

~~(A)~~ (A) in which the transaction is agreed to, in the case of a business combination, or

~~(B)~~ (B) in which the transaction is publicly announced, in the case of an insider bid or issuer bid~~;~~, or

(b) if the test set out in paragraph (a) is not met~~,(i)~~ and there is a published market for the class of securities,

(~~ii~~i) a person ~~or company~~ that is qualified and independent of all interested parties to the transaction, as determined on the same basis applicable to a valuator preparing a formal valuation under section 6.1, provides an opinion to the issuer that there is a liquid market in the class at the date the transaction is agreed to in the case of a business combination, or at the date the transaction is publicly announced in the case of an insider bid or issuer bid,

(~~iii~~ii) the opinion is included in the disclosure document for the transaction, ~~together with a statement that the published market on which the class is principally traded has sent a letter to the Director indicating concurrence with the opinion or providing a similar opinion,~~ and

(~~iv~~iii) the disclosure document for the transaction includes the same disclosure regarding the person ~~or company~~ providing the opinion as is required for a valuator under section 6.2.

(2) For the purpose of determining whether an issuer satisfies the market value requirement of subparagraph (1)(a)(~~iii~~ii), the market value of a class of securities for a calendar month is calculated by multiplying

(a) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable~~;~~, by

~~(b) if~~

(b) ~~(i) the published market provides a closing price for the securities,~~ the arithmetic average of the closing prices of the securities of that class on the published market on which that class was principally traded for each of the trading days during the calendar month, if the published market provides a closing price for the securities, or

~~(ii) the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day,~~ c) the arithmetic average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month.~~(3) An issuer that relies on an opinion referred to in subparagraph (1)(b)(ii)~~

~~shall cause the letter referred to in subparagraph (1)(b)(iii) to be sent promptly to the Director~~, if the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day.

1.3 Transactions by Wholly-Owned Subsidiary Entity – ~~In~~ For the purposes of this ~~Rule~~Instrument, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be also a transaction of the issuer, and, for greater certainty, a ~~formal~~ bid made by a wholly-owned subsidiary entity of an issuer for securities of the issuer is deemed to be also an issuer bid made by the issuer.

1.4 Transactions by Underlying Operating Entity of Income Trust – ~~In~~ For the purposes of this ~~Rule~~Instrument, a transaction of an underlying operating entity of an income trust within the meaning of National Policy 41-201 *Income Trusts and Other Indirect Offerings* is deemed to be a transaction of the income trust, and a related party of the underlying operating entity is deemed to be a related party of the income trust.

1.5 Redeemable Securities as Consideration in Business Combination – ~~In~~ For the purposes of this ~~Rule~~,Instrument, if all or part of the consideration that holders of affected securities receive in a business combination consists of securities that are redeemed for cash within seven days of their issuance, the cash proceeds of the redemption, rather than the redeemed securities, are deemed to be consideration that the holders of the affected securities receive in the business combination.

1.6 Beneficial Ownership

(1) Despite any other provision in securities legislation, for the purposes of this Instrument

(a) a person is deemed to own beneficially securities beneficially owned by a person it controls or by an affiliated entity of the controlled person if the affiliated entity is a subsidiary entity of the controlled person,

(b) a person is deemed to own beneficially securities beneficially owned by its affiliated entity if the affiliated entity is a subsidiary entity of the person,

(2) For the purposes of the definitions of collateral benefit, control person, downstream transaction and related party, in determining beneficial ownership, the following provisions apply:

(a) in Ontario, section 90 of the *Securities Act*;

(b) in Québec, section 1.8 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*.

(3) In Québec, for the purposes of this Instrument, a person that beneficially owns securities means a person that owns the securities or that holds securities registered under the name of an intermediary acting as nominee, including a trustee or agent.

1.7 Control - For the purposes of the definition of "subsidiary entity", a person controls a second person if

(a) the person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the person to elect a majority of the directors of the second person, unless the person beneficially owns or exercises control or direction over voting securities only to secure an obligation,

(b) the second person is a partnership, the person beneficially owns or exercises control or direction over more than 50 per cent of the interests in the partnership, or

(c) the second person is a limited partnership, the person is the general partner of the limited partnership or the control person of the general partner.

~~**1.6 Application to Act, Regulation and Other Rules**~~**1.8 Entity -** For the purposes of the ~~Act, the Regulation and the rules, "going private transaction"~~definition of "related party", an entity has the meaning ascribed to the term "~~business combination" in section 1.1 of this Rule, and "insider bid" and "related party transaction" have the meanings ascribed to those terms in section 1.1 of this Rule~~person" in section 1.1, other than an individual.

PART 2 INSIDER BIDS

2.1 Application

(1) This Part ~~does not apply~~applies to a bid that is an insider bid ~~that is exempt from sections 95 to 100 of the Act under~~.

~~(a) subsection 93(1) of the Act; or~~

~~(b) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.~~

~~(2) This Part does not apply to a take-over bid that is an insider bid solely because of the application of section 90 of the Act to an agreement between the offeror and a security holder of the offeree issuer that offeree securities beneficially owned by the security holder, or over which the security holder exercises control or direction, will be tendered to the bid, if~~

~~(a) the security holder is not a joint actor with the offeror; and~~

~~(b) the general nature and material terms of the agreement to tender are disclosed in a news release and report filed under section 101 of the Act, or are otherwise generally disclosed.~~

(~~3~~2) This Part does not apply to an insider bid in respect of which the offeror complies with National Instrument 71-101 —*The Multijurisdictional Disclosure System*, unless persons ~~or companies~~ whose last address as shown on the books of the offeree issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of ~~National Instrument 71-101,~~that instrument, hold 20 per cent or more of the class of securities that is the subject of the bid.

2.2 Disclosure

(1) The offeror shall disclose in the disclosure document for an insider bid

(a) the background to the insider bid~~;~~,

(b) in accordance with section 6.8, every prior valuation in respect of the offeree issuer~~(i)~~ that has been made in the 24 months before the date of the insider bid, and~~(ii)~~ the existence of which is known, after reasonable inquiry, to the offeror or any director or senior officer of the offeror~~; and~~,

(c) ~~(c)~~ the formal valuation exemption, if any, on which the offeror is relying under section 2.4 and the facts supporting that reliance~~.~~, and

(d) the disclosure required by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, to the extent applicable and with necessary modifications.

(2) The board of directors of the offeree issuer shall include in the directors' circular for an insider bid

(a) disclosure, in accordance with section 6.8, of every prior valuation in respect of the offeree issuer not disclosed in the disclosure document for the insider bid

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeree issuer or to any director or senior officer of the offeree issuer~~;~~,

(b) a description of the background to the insider bid to the extent the background has not been disclosed in the disclosure document for the insider bid~~;~~,

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the insider bid, which offer was received by the issuer during the 24 months before the insider bid was publicly announced, and a description of the offer and the background to the offer~~;~~, and

(d) ~~(d)~~ a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the offeree issuer for the insider bid, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

2.3 Formal Valuation

(1) ~~Subject to section 2.4, the~~The offeror in an insider bid shall

(a) obtain, at its own expense, a formal valuation~~;~~,

(b) provide the disclosure required by section ~~6.2;~~6.2,

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the insider bid, unless the formal valuation is included in its entirety in the disclosure document~~;~~, and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) An independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to

(a) determine who the valuator will be~~;~~,

(b) supervise the preparation of the formal valuation~~;~~, and

(c) use its best efforts to ensure that the formal valuation is completed and provided to the offeror in a timely manner.

2.4 Exemptions from Formal Valuation Requirement

(1) Section 2.3 does not apply to an offeror in connection with an insider bid in any of the following circumstances:

~~1. Discretionary Exemption - The offeror has been granted an exemption from section 2.3 under section 9.1.~~

~~2.~~(a) **Lack of Knowledge and Representation** - ~~Neither~~neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed~~.~~,

~~3.~~(b) **Previous Arm's Length Negotiations** ~~– If~~ – all of the following conditions are satisfied:

(~~a~~i) the consideration per security under the insider bid is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the offeree issuer in arm's length negotiations in connection with

(~~i~~A) the making of the insider bid,

(~~ii~~B) one or more other transactions agreed to within 12 months before the date of the first public announcement of the insider bid, or

(~~iii~~C) a combination of transactions referred to in clauses (~~i~~A) and (~~ii~~B),

(~~b~~ii) at least one of the selling security holders party to an agreement referred to in clause (~~a~~)(i)(A) or (~~ii~~B) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(~~i~~A) at least five per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person ~~or company~~ that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), or

(~~ii~~B) at least 10 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person ~~or company~~ that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2),

(~~c~~iii) one or more of the selling security holders party to any of the transactions referred to in subparagraph (~~a~~i) beneficially own or exercise control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (3), beneficially owned, or over which control or direction was exercised, by ~~entities~~persons other than the person ~~or company~~, and joint actors with the person ~~or company~~, that entered into the agreements with the selling security holders,

(~~d~~iv) the offeror reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (~~a) (~~i)

(A) each selling security holder party to the agreement had full knowledge and access to information concerning the offeree issuer and its securities, and

(~~ii~~B) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by that selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(~~e~~v) at the time of each of the agreements referred to in subparagraph (~~a~~i), the offeror did not know of any material information in respect of the offeree issuer or the offeree securities that

(~~i~~A) had not been generally disclosed, and

(~~ii~~B) if generally disclosed, could have reasonably been expected to increase the agreed consideration,

(~~f~~vi) if any of the agreements referred to in subparagraph (~~a~~i) was entered into with a selling security holder by a person ~~or company~~ other than the offeror, the offeror reasonably believes, after reasonable inquiry, that at the time of that agreement, the person ~~or company~~ did not know of any material information in respect of the offeree issuer or the offeree securities that

(~~i~~A) had not been generally disclosed, and

(~~ii~~B) if disclosed, could have reasonably been expected to increase the agreed consideration, ~~and~~

(~~g~~vii) the offeror does not know, after reasonable inquiry, of any material information in respect of the offeree issuer or the offeree securities since the time of each of the agreements referred to in subparagraph (~~a~~i) that has not been generally disclosed and could reasonably be expected to increase the value of the offeree securities~~.~~;

4.(c) **Auction** - ~~If~~ all of the following conditions are satisfied:

(~~a~~i) the insider bid is publicly announced or made while

(~~i~~A) one or more ~~formal~~ bids for securities of the same class that is the subject of the insider bid have been made and are outstanding, or

(~~ii~~B) one or more proposed transactions are outstanding that

(~~A~~I) are business combinations in respect of securities of the same class that is the subject of the insider bid and ascribe a per security value to those securities, or

(~~B~~II) would be business combinations in respect of securities of the same class that is the subject of the insider bid, except that they come within the exception in paragraph (e) of the definition of business combination~~,~~ and ascribe a per security value to those securities,

(~~b~~ii) at the time the insider bid is made, the offeree issuer has provided equal access to the offeree issuer, and to information concerning the offeree issuer and its securities, to the offeror in the insider bid, all offerors in the other ~~formal~~ bids, and all parties to the proposed transactions described in clause (~~a~~i)(~~ii~~B), ~~and~~

(~~c~~iii) the offeror, in the disclosure document for the insider bid,

(~~i~~A) includes all material information concerning the offeree issuer and its securities that is known to the offeror after reasonable inquiry but has not been generally disclosed, together with a description of the nature of the offeror's access to the issuer, and

(~~ii~~B) states that the offeror does not know, after reasonable inquiry, of any material information concerning the offeree issuer and its securities other than information that has been disclosed under clause (~~i~~A) or that has otherwise been generally disclosed.

(2) For the purposes of subparagraph ~~3~~(b)(ii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the agreement referred to in clause ~~3~~(~~a~~b)(i)(A) or (~~ii~~B) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time~~;~~, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, or ~~under section 2.1 of National Instrument 62-102 – *Disclosure of Outstanding Share Data* or~~ section 5.4 of National Instrument 51-102 ~~–~~ *Continuous Disclosure Obligations*, immediately preceding the date of the agreement referred to in clause ~~3~~(~~a~~b)(i)(A) or (~~ii~~B) of subsection (1).

(3) For the purposes of subparagraph ~~3~~(~~c~~b)(iii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph ~~3~~(~~a~~b)(i) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time~~;~~, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, or ~~under section 2.1 of National Instrument 62-102 or~~ section 5.4 of National Instrument 51-102 Continuous Disclosure Obligations, immediately preceding the date of the last of the agreements referred to in subparagraph ~~3~~(~~a~~b)(i) of subsection (1).

PART 3 ISSUER BIDS

3.1 Application

(1) This Part ~~does not apply~~applies to a bid that is an issuer bid ~~that is exempt from sections 95 to 100 of Part XX of the Act under~~

~~(a) subsection 93(3) of the Act; or(b) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise~~.

(2) This Part does not apply to an issuer bid that complies with National Instrument 71-101 ~~–~~ *The Multijurisdictional Disclosure System*, unless persons ~~or companies~~ whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of ~~National Instrument 71-101,~~that instrument, hold 20 per cent or more of the class of securities that is the subject of the bid.

3.2 Disclosure - The issuer shall include in the disclosure document for an issuer bid

~~(a) the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable;(b)~~ a description of the background to the issuer bid~~;~~,

(~~c~~b) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the issuer bid, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer~~;~~,

(~~d~~c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the issuer bid, which offer was received by the issuer during the 24 months before the issuer bid was publicly announced, and a description of the offer and the background to the offer~~;~~,

(~~e~~d) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the issuer bid, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee~~;~~,

(~~f~~e) a statement of the intention, if known to the issuer after reasonable inquiry, of every interested party to accept or not to accept the issuer bid~~;~~,

(~~g~~f) a description of the effect that the issuer anticipates the issuer bid, if successful, will have on the direct or indirect voting interest in the issuer of every interested party~~;~~, and

(~~h~~g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 3.4 and the facts supporting that reliance.

3.3 Formal Valuation

(1) ~~Subject to section 3.4, an~~An issuer that makes an issuer bid shall

(a) obtain a formal valuation~~;~~,

(b) provide the disclosure required by section ~~6.2;~~6.2,

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the issuer bid, unless the formal valuation is included in its entirety in the disclosure document~~;~~,

(d) if there is an interested party other than the issuer, state in the disclosure document who will pay or has paid for the valuation~~;~~, and

(e) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be~~;~~, and

(b) supervise the preparation of the formal valuation.

3.4 Exemptions from Formal Valuation Requirement - Section 3.3 does not apply to an issuer in connection with an issuer bid in any of the following circumstances:

~~1. Discretionary Exemption - The issuer has been granted an exemption from section 3.3 under section 9.1.~~

(a) ~~2.~~ **Bid for Non-Convertible Securities -** ~~The~~the issuer bid is for securities that are not equity securities and that are not, directly or indirectly, convertible into equity securities~~.~~

~~3.~~(b) **Liquid Market** - ~~The~~the issuer bid is made for securities for which

(~~a~~i) a liquid market exists,

(~~b~~ii) it is reasonable to conclude that, following the completion of the bid, there will be a market for holders of the securities who do not tender to the bid that is not materially less liquid than the market that existed at the time of the making of the bid, and

(~~c~~iii) if an opinion referred to in ~~subparagraph~~paragraph (b~~)~~(ii) of subsection 1.2(1) is provided, the person ~~or company~~ providing the opinion reaches the conclusion described in subparagraph ~~3~~(b)(ii) of this section 3.4 and so states in its opinion.

PART 4 BUSINESS COMBINATIONS

4.1 Application - This Part does not apply to an issuer carrying out a business combination if

(a) the issuer is not a reporting issuer~~;~~,

(b) the issuer is a mutual fund~~;~~, or

(c) (i) at the time the business combination is agreed to, ~~(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold~~securities held by beneficial owners in the local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

~~(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer, and~~

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities ~~whose last address as shown on the books of the issuer is in Ontario~~in the local jurisdiction.

4.2 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a business combination for which section 4.5 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a business combination shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form ~~33 of the Regulation~~62-104F2 Issuer Bid Circular of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, to the extent applicable and with necessary modifications~~;~~,

(b) ~~the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;(c)~~ a description of the background to the business combination~~;~~,

(~~d~~c) disclosure in accordance with section 6.8 of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer~~;~~,

(~~e~~d) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the business combination was agreed to, and a description of the offer and the background to the offer~~;~~,

(~~f~~e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee~~;~~,

(~~g~~f) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 4.4 and the facts supporting that reliance~~; and~~,

(g) ~~(h)~~ disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the business combination is obtained, and

(h) the identity of the holders of securities specified in paragraph (g) together with their individual holdings.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the business combination or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change~~;~~, and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

4.3 Formal Valuation

(1) ~~Subject to section 4.4, an~~An issuer shall obtain a formal valuation for a business combination if

(a) an interested party would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors, or

(b) an interested party is a party to any connected transaction to the business combination, if the connected transaction is a related party transaction for which the issuer is required to obtain a formal valuation under section 5.4.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) provide the disclosure required by section ~~6.2;~~6.2,

(b) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the business combination, unless the formal valuation is included in its entirety in the disclosure document~~;~~,

(c) state in the disclosure document for the business combination who will pay or has paid for the valuation~~;~~, and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be~~;~~, and

(b) supervise the preparation of the formal valuation.

4.4 Exemptions from Formal Valuation Requirement

(1) Section 4.3 does not apply to an issuer carrying out a business combination in any of the following circumstances:

~~1. Discretionary Exemption - The issuer has been granted an exemption from section 4.3 under section 9.1.~~(a) ~~2.~~ **Issuer Not Listed on Specified Markets -** ~~No~~no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States~~.~~ other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

~~3.~~ (b) **Previous Arm's Length Negotiations** ~~- If~~ – all of the following conditions are satisfied:

(~~a~~i) the consideration per affected security under the business combination is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the issuer in arm's length negotiations in connection with

(~~i~~A) the business combination,

(~~ii~~B) one or more other transactions agreed to within 12 months before the date of the first public announcement of the business combination, or

(~~iii~~C) a combination of transactions referred to in clauses (~~i~~A) and (~~ii~~B),

(~~b~~ii) at least one of the selling security holders party to an agreement referred to in clause (~~a)~~(i)(A) or (~~ii~~B) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(~~i~~A) at least five per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person ~~or company~~ that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), or

(~~ii~~B) at least 10 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person ~~or company~~ that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2),

(~~c~~iii) one or more of the selling security holders party to any of the transactions referred to in subparagraph (~~a~~i) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (3), beneficially owned or over which control or direction was exercised by ~~entities~~persons other than the person ~~or company~~, and joint actors with the person ~~or company~~, that entered into the agreements with the selling security holders,

(~~d~~iv) the person ~~or company~~ proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph ~~(a) (~~i)

(A) each selling security holder party to the agreement had full knowledge of and access to information concerning the issuer and its securities, and

(~~ii~~B) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by the selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(~~e~~v) at the time of each of the agreements referred to in subparagraph ~~(a), the person or company proposing to carry out the business combination with the issuer did not know of~~

~~any material information in respect of the issuer or the affected securities that~~ (~~i~~i), the person proposing to carry out the business combination with the issuer did not know of any material information in respect of the issuer or the affected securities that

(A) had not been generally disclosed, and

(~~i~~iB) if disclosed, could have reasonably been expected to increase the agreed consideration,

(~~f~~vi) any of the agreements referred to in subparagraph (~~a~~i) was entered into with a selling security holder by ~~an entity~~a person other than the person ~~or company~~ proposing to carry out the business combination with the issuer, the person ~~or company~~ proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of that agreement, the ~~entity~~person entering into the agreement with the selling security holder did not know of any material information in respect of the issuer or the affected securities that

~~(i) had not been generally disclosed, and~~

(A) had not been generally disclosed, and

~~(ii) if disclosed, could have reasonably been expected to increase the agreed consideration, and~~

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(~~g~~vii) the person ~~or company~~ proposing to carry out the business combination with the issuer does not know, after reasonable inquiry, of any material information in respect of the issuer or the affected securities since the time of each of the agreements referred to in subparagraph (~~a~~i) that has not been generally disclosed and could reasonably be expected to increase the value of the affected securities~~.~~.

4. (c) **Auction** ~~If~~ all of the following conditions are satisfied:

(~~a~~i) the business combination is publicly announced while

(~~i~~A) one or more proposed transactions are outstanding that

(~~A~~I) are business combinations in respect of the affected securities, and ascribe a per security value to those securities, or

(~~B~~II) would be business combinations in respect of the affected securities, except that they come within the exception in paragraph (e) of the definition of business combination, and ascribe a per security value to those securities, ~~or~~

(~~i~~iB) one or more ~~formal~~ bids for the affected securities have been made and are outstanding, ~~and~~

(~~b~~ii) at the time the disclosure document for the business combination is sent to the holders of affected securities, the issuer has provided equal access to the issuer, and to information concerning the issuer and its securities, to the person ~~or company~~ proposing to carry out the business combination with the issuer, all parties to the proposed transactions described in clause (~~a~~)(i)(A), and all offerors in the ~~formal~~ bids~~.~~,

5.(d) **Second Step Business Combination** ~~If~~ all of the following conditions are satisfied:

(~~a~~i) the business combination is being effected by an offeror that made a ~~formal~~ bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(~~b~~ii) the business combination is completed no later than 120 days after the date of expiry of the ~~formal~~ bid,

(~~c~~iii) the consideration per security that the security holders would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the ~~formal~~ bid,

(~~d~~iv) the disclosure document for the ~~formal~~ bid

(~~i~~A) disclosed that if the offeror acquired securities under the ~~formal~~ bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in subparagraphs (~~b~~ii) and (~~c~~iii),

(~~ii~~B) described the expected tax consequences of both the ~~formal~~ bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(~~A~~I) were reasonably foreseeable to the offeror, and

(~~B~~II) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(~~iii~~C) disclosed that the tax consequences of the~~ formal~~ bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination~~.~~,

~~6.~~(e) **Non-redeemable Investment Fund** - ~~The~~the issuer is a non-redeemable investment fund that

(~~a~~i) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(~~b~~ii) at the time of publicly announcing the business combination, publicly disseminates the net asset value of its securities as of the business day before the announcement.

(f) **Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority - t**he transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if all of the following conditions are satisfied:

(i) the transaction does not and will not have any adverse tax or other consequences to the issuer, the person resulting from the combination, or beneficial owners of affected securities generally,

(ii) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the person resulting from the combination,

(iii) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(iv) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the person resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,

(v) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

(2) For the purposes of subparagraph ~~3(b~~(b)(ii) of subsection (1), the number of outstanding securities of the class of affected securities ~~(a) is calculated at the time of the agreement referred to in clause 3(a)(i) or (ii) of~~

~~subsection (1), if the person or company proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or~~

(a) is calculated at the time of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1), if the person proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or section 5.4 of National Instrument 51-102 *Continuous Disclosure Obligations*, immediately preceding the date of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1).

(3) For the purposes of subparagraph (b)(iii) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph (b)(i) of subsection (1), if the person proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if ~~subparagraph~~paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or ~~under~~ section ~~2.1~~5.4 of National Instrument ~~62-102 – *Disclosure of Outstanding Share Data* or section 5.4 of National Instrument 51-102 –~~51-102 C*ontinuous Disclosure Obligations*, immediately preceding the date of the ~~agreement~~last of the agreements referred to in ~~clause 3(a)(i) or (ii~~subparagraph (b)(i) of subsection (1).

~~(3) For the purposes of subparagraph 3(c) of subsection (1), the number of outstanding securities of the class of affected securities~~

~~(a) is calculated at the time of the last of the agreements referred to in subparagraph 3(a) of subsection (1), if the person or company proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or~~

~~(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or under section 2.1 of National Instrument 62-102 or section 5.4 of National Instrument 51-102, immediately preceding the date of the last of the agreements referred to in subparagraph 3(a) of subsection (1).~~

4.5 Minority Approval - ~~Subject to section 4.6, an~~An issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6 Exemptions from Minority Approval Requirement

(1) Section 4.5 does not apply to an issuer carrying out a business combination in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document for the business combination:

~~1. Discretionary Exemption - The issuer has been granted an exemption from section 4.5 under section 9.1. 2.~~(a) **90 Per Cent Exemption** - ~~Subject~~subject to subsection (2), one or more persons ~~or companies~~ that are interested parties within the meaning of subparagraph (c)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time that the business combination is agreed to, and either

(~~a~~i) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(~~b~~ii) if an appraisal remedy referred to in subparagraph (~~a~~i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in ~~subsection 185(4)~~section 190 of the ~~OBCA~~CBCA and that is described in the disclosure document for the business combination;

(b) **Other Transactions Exempt from Formal Valuation** – the circumstances described in paragraph (f) of subsection 4.4 (1).

(2) If there are two or more classes of affected securities, paragraph ~~2~~(a) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

4.7 Conditions for Relief from ~~OBCA~~*Business Corporations Act* Requirements ~~- An~~ In Ontario, an issuer that is governed by the *Business Corporations Act (*"OBCA") and proposes to carry out a "going private transaction", as defined in subsection 190(1) of the OBCA, is exempt from subsections (2), (3) and (4) of section 190 of the OBCA, and is not required to make an application for exemption from those subsections under subsection 190(6) of the OBCA, if

(a) the transaction is not a business combination~~;~~,

(b) Part 4 does not apply to the transaction by reason of section ~~4.1;~~4.1, or

(c) ~~(c)~~ the transaction is carried out in compliance with Part 4, and, for this purpose, compliance includes reliance on any applicable exemption from a requirement of Part 4, including a discretionary exemption granted ~~by the Director~~ under section 9.1.

PART 5 RELATED PARTY TRANSACTIONS

5.1 Application - This Part does not apply to an issuer carrying out a related party transaction if

(a) the issuer is not a reporting issuer~~;~~,

(b) the issuer is a mutual fund~~;~~,

(c) (i) at the time the transaction is agreed to,

~~(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold less than two per cent of the outstanding securities of each class of affected securities of the issuer, and(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own~~securities held by beneficial owners in the local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities ~~whose last address as shown on the books of the issuer is in Ontario;~~in the local jurisdiction,

(d) the parties to the transaction consist solely of

(i) an ~~entity~~issuer and one or more of its wholly-owned subsidiary entities, or

(ii) wholly-owned subsidiary entities of the same ~~entity;~~ issuer,

(e) the transaction is a business combination for the issuer~~;~~,

(f) the transaction would be a business combination for the issuer except that it comes within an exception in any of paragraphs (a) to (e) of the definition of business combination~~;~~,

(g) the transaction is a downstream transaction for the issuer~~;~~,

(h) the issuer is obligated to and ~~does carry~~carries out the transaction substantially under the terms

(i) that were agreed to, and generally disclosed, before December 15, 2000 in Québec and before May 1, ~~2000,~~2000 in Ontario,

(ii) that were agreed to, and generally disclosed, before the issuer became a reporting issuer, or

(iii) of a previous transaction the terms of which were generally disclosed, including an issuance of a convertible security, if the previous transaction was carried out in compliance with this ~~Rule~~Instrument, including in reliance on any applicable exemption or exclusion, or was not subject to this ~~Rule~~Instrument~~;~~,

(i) the transaction is a distribution

(i) of securities of the issuer and is a related party transaction for the issuer solely because the interested party is an underwriter of the distribution, and

(ii) carried out in compliance with, including in reliance on any applicable exemption from, National Instrument 33-105– *Underwriting Conflicts*~~;~~,

(j) the issuer is subject to the requirements of Part IX of the *Loan and Trust Corporations Act* (Ontario), the *Act respecting Trust Companies and Savings Companies* (Quebec), Part XI of the *Bank Act* (Canada), Part XI of the *Insurance Companies Act* (Canada), or Part XI of the *Trust and Loan Companies Act* (Canada), or any successor to that legislation, and the issuer complies with those requirements~~;~~, or

(k) the transaction is a rights offering, dividend distribution, or any other transaction in which the general body of holders in Canada of affected securities of the same class are treated identically on a per security basis, if

(i) the transaction has no interested party within the meaning of paragraph (d) of the definition of interested party, or

(ii) the transaction is a rights offering, there is an interested party only because a related party of the issuer provides a stand-by commitment for the rights offering, and the stand-by commitment complies with ~~Rule~~National Instrument 45-101– *Rights Offerings*.

5.2 Material Change Report

(1) An issuer shall include in a material change report, if any, required to be filed under ~~the Act~~securities legislation for a related party transaction

(a) a description of the transaction and its material terms~~;~~,

(b) the purpose and business reasons for the transaction~~;~~,

(c) the anticipated effect of the transaction on the issuer's business and affairs~~;~~,

(d) a description of

(i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties, and

(ii) the anticipated effect of the transaction on the percentage of securities of the issuer, or of an affiliated entity of the issuer, beneficially owned or controlled by each person ~~or company~~ referred to in subparagraph (i) for which there would be a material change in that percentage~~;~~,

(e) unless this information will be included in another disclosure document for the transaction, a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee~~;~~,

(f) ~~subject to subsection (3),~~ a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction~~;~~,

(g) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the material change report, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer~~;~~,

(h) the general nature and material terms of any agreement entered into by the issuer, or a related party of the issuer, with an interested party or a joint actor with an interested party, in connection with the transaction~~;~~, and

(i) disclosure of the formal valuation and minority approval exemptions, if any, on which the issuer is relying under sections 5.5 and 5.7, respectively, and the facts supporting reliance on the exemptions.

(2) If the issuer files a material change report less than 21 days before the expected date of the closing of the transaction, the issuer shall explain in the news release required to be issued under ~~the Act~~National Instrument 51-102 *Continuous Disclosure Obligations* and in the material change report why the shorter period is reasonable or necessary in the circumstances.

(3) Despite paragraphs (1)(f) and 5.4(2)(a), if the issuer is required to include a summary of the formal valuation in the material change report and the formal valuation is not available at the time the issuer files the material change report, the issuer shall file a supplementary material change report containing the disclosure required by paragraph (1)(f) as soon as the formal valuation is available.

(4) The issuer shall send a copy of any material change report prepared by it in respect of the transaction to any security holder of the issuer upon request and without charge.

5.3 Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a related party transaction for which section 5.6 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a related party transaction to which this section applies shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form ~~33 of the Regulation~~62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*, to the extent applicable and with necessary modifications~~;~~,

(b) ~~the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;(c)~~ a description of the background to the transaction~~;~~,

(~~d~~c) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer~~;~~,

(~~e~~d) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the transaction was agreed to, and a description of the offer and the background to the offer~~;~~,

(~~f~~e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee~~;~~,

(~~g~~f) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 5.5 and the facts supporting that reliance~~; and~~,

(~~h~~g) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained, and

(h) the identity of the holders of securities specified in paragraph (g) together with their individual holdings.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the related party transaction or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change~~;~~, and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

5.4 Formal Valuation

(1) ~~Subject to section 5.5, an~~An issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the related party transaction, unless the formal valuation is included in its entirety in the disclosure document~~;~~,

(b) state in the disclosure document who will pay or has paid for the valuation~~;~~, and

(c) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be~~;~~, and

(b) supervise the preparation of the formal valuation.

5.5 Exemptions from Formal Valuation Requirement - Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

~~1. Discretionary Exemption - The issuer has been granted an exemption from section 5.4 under section 9.1.~~

~~2.~~ (a) **Fair Market Value Not More Than 25% of Market Capitalization** - ~~A~~at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves interested parties, exceeds 25 per cent of the issuer's market capitalization, and for this purpose

(~~a~~i) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds the threshold for this exemption shall be made by the issuer's board of directors acting in good faith,

(~~b~~ii) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons ~~or companies~~ other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the

transaction shall be deemed to be the consideration received by those persons ~~or companies~~,

(~~c~~iii) if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemption in this paragraph ~~2.~~(a), require formal valuations under this ~~Rule~~Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for this exemption are met, and

(~~d~~iv) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets (the "future transaction"), the calculation of the fair market value for the initial transaction shall include the fair market value, as of the time the initial transaction is agreed to, of the maximum number of securities or other consideration that the issuer may be required to issue or pay in the future transaction~~.~~.

~~3.~~(b) **Issuer Not Listed on Specified Markets** - ~~No~~no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States~~.~~ other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

~~4.~~(c) **Distribution of Securities for Cash** - ~~The~~the transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(~~a~~i) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(~~b~~ii) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party~~.~~.

~~5.~~(d) **Certain Transactions in the Ordinary Course of Business** - ~~The~~the transaction is

(~~a~~i) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal or movable property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

(~~b~~ii) a lease of real or immovable property or personal or movable property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to the issuer than if the lease was with a person ~~or company~~ dealing at arm's length with the issuer and the existence of which has been generally disclosed~~.~~.

~~6.~~(e) **Transaction Supported by Arm's Length Control** ~~Block Holder~~**Person** - ~~The~~the interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control ~~block holder~~person of the issuer and who, in the circumstances of the transaction

(~~a~~i) is not also an interested party,

(~~b~~ii) is at arm's length to the interested party, and

(~~c~~iii) supports the transaction~~.~~.

~~7.~~(f) **Bankruptcy, Insolvency, Court Order** ~~- If~~

(~~a~~i) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(~~i~~A) bankruptcy or insolvency law, or

(~~ii~~B) section 191 of the ~~*Canada Business Corporations Act*~~CBCA, any successor to that section, or equivalent legislation of a jurisdiction,

(~~b~~ii) the court is advised of the requirements of this ~~Rule~~Instrument regarding formal valuations for related party transactions, and of the provisions of this paragraph ~~7.~~(f), and

(~~c~~iii) the court does not require compliance with section ~~5.4.~~5.4,

~~8.~~(g) **Financial Hardship** – ~~If~~

(~~a~~i) the issuer is insolvent or in serious financial difficulty,

(~~b~~ii) the transaction is designed to improve the financial position of the issuer,

(~~c~~iii) paragraph ~~7~~(f) is not applicable,

(~~d~~iv) the issuer has one or more independent directors in respect of the transaction, and

(~~e~~v) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(~~i~~A) subparagraphs (~~a~~i) and (~~b~~ii) apply, and

(~~ii~~B) the terms of the transaction are reasonable in the circumstances of the issuer~~.~~.

~~9. Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority - The transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if~~

~~(a) the transaction does not and will not have any adverse tax or other consequences to the issuer, the entity resulting from the combination, or beneficial owners of affected securities generally,~~

~~(b) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the entity resulting from the combination,~~

~~(c) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,~~

~~(d) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the entity resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction, and~~

~~(e) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.~~

(h) **Asset Resale** –

(i) ~~10. Asset Resale - The~~the subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

(~~a~~A) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

(~~b~~B) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction, and

~~and~~ (ii) the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section ~~6.2.~~ 6.2.

~~11.~~(i) **Non-redeemable Investment Fund** - ~~The~~the issuer is a non-redeemable investment fund that

(~~a~~i) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(ii) ~~(b)~~ at the time of publicly announcing the related party transaction, publicly disseminates the net asset value of its securities as of the business day before the announcement~~.~~.

(j) **Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority - t**he transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if all of the following conditions are satisfied:

(i) the transaction does not and will not have any adverse tax or other consequences to the issuer, the person resulting from the combination, or beneficial owners of affected securities generally,

(ii) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the person resulting from the combination,

(iii) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(iv) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the person resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,

(v) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

5.6 Minority Approval - ~~Subject to section 5.7, an~~An issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement

(1) Subject to subsections (2), (3), (4) and (5), section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

~~1. Discretionary Exemption - The issuer has been granted an exemption from section 5.6 under section 9.1.~~

~~2.~~(a) **Fair Market Value Not More Than 25 Per Cent of Market Capitalization** - ~~The~~the circumstances described in paragraph ~~2~~(a) of section ~~5.5.~~5.5,

~~3.~~(b) **Fair Market Value Not More Than $2,500,000 – Distribution of Securities for Cash** - ~~The~~the circumstances described in paragraph 4(c) of section 5.5, if

~~(a)~~ (i) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

~~(b)~~ (ii) at the time the transaction is agreed to, neither the fair market value of the securities to be distributed in the transaction nor the consideration to be received for those securities, insofar as the transaction involves interested parties, exceeds $2,500,000,

~~(c)~~ (iii) the issuer has one or more independent directors in respect of the transaction who are not employees of the issuer, and

~~(d)~~ (iv) at least two-thirds of the directors described in subparagraph (~~c~~iii) approve the transaction~~.~~.

4.(c) **Other Transactions Exempt from Formal Valuation** - ~~The~~the circumstances described in paragraphs ~~5, 6~~(d), (e) and ~~9~~(j) of section ~~5.5.~~5.5.

~~5.~~(d) **Bankruptcy, Insolvency, Court Order** - ~~The~~the circumstances described in subparagraph ~~7~~(~~a~~f)(i) of section 5.5, if the court is advised of the requirements of this ~~Rule~~Instrument regarding minority approval for related party transactions, and of the provisions of this paragraph ~~5,~~. and the court does not require compliance with section ~~5.6.~~5.6.

~~6.~~(e) **Financial Hardship** - ~~The~~the circumstances described in paragraph ~~8~~(g) of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities~~.~~.

(f) **Loan to Issuer, No Equity or Voting Component** –

(i) ~~7. Loan to Issuer, No Equity or Voting Component - The~~the transaction is a loan, or the creation of a credit facility, that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person ~~or company~~ dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

(~~a~~A) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

(~~b~~B) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer,

(ii) and for this purpose, any amendment to the terms of a loan or credit facility ~~shall be~~is deemed to create a new loan or credit facility~~.~~.

~~8.~~(g) **90 Per Cent Exemption** - ~~One~~one or more persons ~~or companies~~ that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

(~~a~~i) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(~~b~~ii) if an appraisal remedy referred to in subparagraph (~~a~~i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in ~~subsection 185(4)~~section 190 of the ~~OBCA~~CBCA and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.

(a) Despite subparagraph ~~2~~(~~e~~a)(iii) of section 5.5, if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemptions in paragraphs ~~2~~(a) and ~~3~~(b) of

subsection (1), require minority approval under this ~~Rule~~Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for those exemptions are met.

(3) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph ~~7~~(f) of subsection (1) does not apply, the fair market value tests for the exemptions in paragraphs ~~2~~(a) and ~~3~~(b) of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves interested parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.

(4) Subparagraphs ~~2~~(a)(i), (~~b~~iii) and (~~d~~iv) of section 5.5 apply to paragraph ~~3~~(b) of subsection 5.7(1) with appropriate modifications.

(5) If there are two or more classes of affected securities, paragraph ~~8~~(g) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1 Independence and Qualifications of Valuator

(1) Every formal valuation required by this ~~Rule~~Instrument for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.

(2) ~~Subject to subsections (3) and (4), it~~It is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.

(3) A valuator is not independent of an interested party in connection with a transaction if

(a) the valuator is an associated or affiliated entity or issuer insider of the interested party~~;~~,

(b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction~~;~~,

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction~~;~~,

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group~~;~~,

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transaction and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation~~;~~, or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entity of the valuator.

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

6.2 Disclosure ~~Re~~Regarding Valuator - An issuer or offeror required to obtain a formal valuation for a transaction shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent~~;~~.

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence~~;~~.

(c) a description of the compensation paid or to be paid to the valuator~~;~~.

(d) a description of any other factors relevant to a perceived lack of independence of the valuator~~;~~.

(e) the basis for determining that the valuator is qualified~~;~~ and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).

6.3 Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid~~;~~.

(b) the affected securities, in the case of a business combination~~;~~.

(c) ~~subject to subsection (2),~~ any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraph (a) or (b)~~;~~ and

(d) ~~subject to subsection (2),~~ the non-cash assets involved in a related party transaction.

(2) A formal valuation of non-cash consideration or assets referred to in paragraph (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market~~;~~.

(b) the person ~~or company~~ that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person ~~or company~~ has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed~~;~~.

(c) in the case of an insider bid, issuer bid or business combination

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required~~;~~ and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs 4(~~a~~c)(i) and (~~b~~ii) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.

6.4 Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.

(2) A person ~~or company~~ preparing a formal valuation under this ~~Rule~~Instrument shall

(a) prepare the formal valuation in a diligent and professional manner~~;~~.

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed;

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b);

(d) in determining the fair market value of offeree securities or affected securities, not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest; and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

6.5 Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues;

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so;

(c) indicates an address where a copy of the formal valuation is available for inspection; and

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

6.6 Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders; or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7 Valuator's Consent - An issuer or offeror required to obtain a formal valuation shall

(a) obtain the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained~~;~~, and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

We refer to the formal valuation dated •, which we prepared for (indicate name of the person ~~or company~~) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the filing of the formal valuation with the ~~Ontario Securities Commission~~securities regulatory authority and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.

6.8 Disclosure of Prior Valuation

(1) A person ~~or company~~ required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction~~;~~,

(b) indicate an address where a copy of the prior valuation is available for inspection~~;~~, and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person ~~or company~~ that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this ~~Rule~~Instrument, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person ~~or company~~ required to disclose the prior valuation~~;~~,

(b) the prior valuation is not reasonably obtainable by the person ~~or company~~ required to disclose it, irrespective of any obligations of confidentiality~~;~~, and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).

6.9 Filing of Prior Valuation - A person ~~or company~~ required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.

6.10 Consent of Prior Valuator Not Required - Despite sections ~~196 of the Regulation~~2.15 and 2.21 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, sections 94.7 and 96.1 of the *Securities Act*, a person ~~or company~~ required to disclose a prior valuation under this ~~Rule~~Instrument is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.

PART 7 INDEPENDENT DIRECTORS

7.1 Independent Directors

(1) ~~Subject to subsections (2) and (3)~~For the purposes of this Instrument, it is a question of fact as to whether a director of an issuer is independent.

(2) A director of an issuer is not independent in connection with a transaction if ~~he or she~~the director

(a) is an interested party in the transaction~~;~~,

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer~~;~~,

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer~~;~~,

(d) has a material financial interest in an interested party or an affiliated entity of an interested party~~;~~, or

(e) ~~(e)~~ would reasonably be expected to receive a benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer.

(3) A member of an independent committee for a transaction to which this Instrument applies shall not receive any payment or other benefit from an issuer, an interested party or a successor to any of them that is contingent upon the completion of the transaction.

(4) ~~(3)~~ For the purposes of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1 General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

(2) ~~Subject to section 8.2, in~~In determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or senior officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer~~;~~,

(b) an interested party~~;~~,

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more ~~entities~~persons that are neither interested parties nor issuer insiders of the issuer~~;~~, or

(d) a joint actor with a person ~~or company~~ referred to in paragraph (b) or (c) in respect of the transaction.

8.2 Second Step Business Combination - Despite subsection 8.1(2), the votes attached to securities acquired under a ~~formal~~ bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid~~;~~,

(b) the security holder that tendered the securities to the bid was not

(i) a direct or indirect party to any connected transaction to the ~~formal~~ bid, or

(ii) entitled to receive, directly or indirectly, in connection with the~~ formal~~ bid

(A) consideration per offeree security that was not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities~~;~~.

(c) the business combination is being effected by the offeror that made the ~~formal~~ bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid~~;~~.

(d) the business combination is completed no later than 120 days after the date of expiry of the ~~formal~~ bid~~;~~.

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the ~~formal~~ bid~~;~~ and

(f) the disclosure document for the ~~formal~~ bid

(i) disclosed that if the offeror acquired securities under the ~~formal~~ bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the ~~formal~~ bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) ~~(iv) identified~~disclosed the number of votes attached to the securities that, ~~if known~~ to the ~~offeror~~knowledge of the issuer after reasonable inquiry, ~~the votes attached to which~~ would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified the holders of securities specified in subparagraph (iv) and set out their individual holdings,

(vi) ~~(v)~~ identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

(vii)~~(vi)~~ described the expected tax consequences of both the ~~formal~~ bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(viii)~~(vii)~~ disclosed that the tax consequences of the ~~formal~~ bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

PART 9 EXEMPTION

9.1 Exemption

(1) In Québec, the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption. This exemption is granted under section 263 of the *Securities Act* (R.S.Q., C. V-1).

(2) ~~**9.1 Exemption** - The Director~~In Ontario, the regulator may grant an exemption to this ~~Rule~~Instrument, in whole or in part, subject to ~~such~~those conditions or restrictions as may be imposed in the exemption.

PART 10 EFFECTIVE DATE

10.1 Effective Date - This Instrument comes into force February 1, 2008.

~~ONTARIO SECURITIES COMMISSION~~COMPANION POLICY 61-~~501~~101CP
~~TO ONTARIO SECURITIES COMMISSION RULE 61-501~~
~~INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS~~
TO MULTILATERAL INSTRUMENT 61-101
~~AND RELATED PARTY~~PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

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~~AND RELATED PARTY~~PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

PART 1 GENERAL

1.1 General - The Autorité des marchés financiers and the Ontario Securities Commission ~~regards~~(or "we") regard it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. ~~In~~We are of the view ~~of the Commission,~~that issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and that the ~~fulfilment~~fulfillment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

~~The Commission does~~We do not consider that the types of transactions covered by ~~Rule 61-501 (the "Rule")~~this Instrument are inherently unfair. ~~The Commission recognizes~~We recognize, however, that these transactions are capable of being abusive or unfair, and ~~has~~have made the ~~Rule~~Instrument to address this.

This Policy expresses ~~the Commission's~~our views on certain matters related to the ~~Rule~~Instrument.

PART 2 INTERPRETATION

2.1 ~~2.1~~ Equal Treatment of Security Holders

(1) **Security Holder Choice -** The definitions of business combination, collateral benefit and interested party, as well as other provisions in the ~~Rule~~Instrument, include the concept of identical treatment of security holders in a transaction. For the purposes of the ~~Rule~~Instrument, if security holders have an identical opportunity under a transaction, then they are considered to be treated identically. For example, if~~,~~ under the terms of a business combination, each security holder has the choice of receiving, for each affected security, either $10 in cash or one common share of ABC Co., ~~the Commission regards~~we regard the security holders as having identical entitlements in amount and form, and as receiving identical treatment, even though they may not all make the same choice. This interpretation also applies where the ~~Rule~~Instrument refers to consideration that is "at least equal in value" and "in the same form", such as in the provisions on second step business combinations.

(2) **Multiple Classes of Equity Securities -** The definitions of business combination and interested party, and the provisions on second step business combinations in section 8.2 of the ~~Rule~~Instrument, refer to circumstances where an issuer carrying out a business combination or related party transaction has more than one class of equity securities. The ~~Rule~~Instrument's treatment of these transactions depends on whether the entitlements of the holders of one class under the transaction are greater than those of the holders of the other classes in relation to the voting and financial participating interests in the issuer represented by the respective securities.

For example: An issuer has outstanding ~~Subordinate Voting Shares~~subordinate voting shares carrying one vote per share, and ~~Multiple Voting Shares~~multiple voting shares carrying ten votes per share, with the shares of the two classes otherwise carrying identical rights. Under the terms of a business combination, holders of the ~~Subordinate Voting Shares~~subordinate voting shares will receive $10 per share. For the ~~Multiple Voting~~multiple voting shareholders to be regarded as not being entitled to greater consideration than the ~~Subordinate Voting~~subordinate voting shareholders under the ~~Rule~~Instrument, the ~~Multiple Voting~~multiple voting shareholders must receive no more than $10 per share. As a second example: An issuer has the same share structure as the issuer in the first example. Under the terms of a business combination, ~~Subordinate Voting~~subordinate voting shareholders will receive, for each ~~Subordinate Voting~~subordinate voting Share, $10 and one ~~Subordinate Voting Share~~subordinate voting share of a successor issuer, carrying one vote per share. For the ~~Multiple Voting~~multiple voting shareholders to be regarded as not being entitled to greater consideration than the ~~Subordinate Voting~~subordinate voting shareholders under the ~~Rule~~Instrument, the ~~Multiple Voting~~multiple voting shareholders must receive, for each ~~Multiple Voting Share~~multiple voting share, no more than $10 and one ~~Multiple Voting Share~~multiple voting share of the successor issuer, carrying no more than ten votes per share and otherwise carrying no greater rights than those of the ~~Subordinate Voting Shares~~subordinate voting shares of the successor issuer.

(3) **Related Party Holding Securities of Other Party to Transaction -** The ~~Rule~~Instrument sets out specific criteria for determining related party and interested party status. Without limiting the application of those criteria, a related party of an issuer is not considered to be treated differently from other security holders of the issuer in a transaction, or to receive a collateral benefit, solely by reason of being a security holder of another party to the transaction. For example, if ABC Co. proposes to amalgamate with XYZ Co., the fact that a director of ABC Co., who is not a control ~~block holder~~person of ABC Co., owns common shares of XYZ Co. (but less than 50 per cent) will not, in and of itself, cause the amalgamation to be considered a business combination for ABC Co. under the ~~Rule~~Instrument.

(4) **Consolidation of Securities -** One of the methods that may be used to effect a business combination is a consolidation of an issuer's securities at a ratio that eliminates the entire holdings of most holders of affected securities, through the elimination of post-consolidated fractional interests. Where this or a similar method is used, the security holders whose entire holdings are not eliminated are not considered to be treated identically to the general body of security holders under the ~~Rule~~Instrument.

(5) **Principle of Equal Treatment in Business Combinations -** The ~~Rule~~Instrument contemplates that a related party of an issuer might not be treated identically to all other security holders in the context of a business combination in which a person ~~or company~~ other than that related party acquires the issuer. There are provisions in the ~~Rule~~Instrument, including the minority approval requirement, that are intended to address this circumstance. Despite these provisions, ~~the Commission is~~we are of the view that, as a general principle, security holders should be treated equally in the context of a business combination, and that differential treatment is only justified if its benefits to the general body of security holders outweigh the principle of equal treatment. While ~~the Commission~~we will generally rely on an issuer's review and approval process, in combination with the provisions of the ~~Rule~~Instrument, to achieve fairness for security holders, ~~the Commission~~we may intervene if it appears that differential treatment is not reasonably justified. Giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.

2.2 Equity Participation by a Related Party - If a related party of an issuer is provided with the opportunity to maintain or acquire an equity interest in the issuer, or in a successor to the business of the issuer, upon completion of a bid or business combination, the following provisions of the Instrument may be relevant.

~~**2.2 Joint Actors in Bids -** The definition of joint actor in the Rule incorporates the interpretation of the term "acting jointly or in concert" in section 91 of the Act, subject to certain qualifications. Among other things, the concept is relevant in determining whether a take-over bid is an insider bid under the Rule and whether securities acquired by an offeror in a formal bid can be included in a minority approval vote regarding a second step business combination under section 8.2 of the Rule. Without limiting the application of the definition, the Commission is of the view that, for a formal bid, an offeror and an insider may be viewed as joint actors if an agreement, commitment or understanding between the offeror and the insider provides that the insider shall not tender to the bid, or provides the insider with an opportunity not offered to all security holders to maintain or acquire a direct or indirect equity interest in the offeror, the issuer or a material asset of the issuer.~~If the equity interest will be derived solely through securities-based compensation for services as an employee, director or consultant, the provisions of the Instrument regarding collateral benefits may be applicable. In other cases, the acquisition of the equity interest or opportunity to maintain an equity interest may be a connected transaction. In either of these instances, votes attaching to the securities owned by the related party may be excluded from the minority vote required for a business combination, including a second step business combination following a bid. We are of the view that the employee compensation exemptions to the collateral benefit and connected transaction definitions do not generally apply to an issuance of securities in the issuer or a successor issuer upon completion of the transaction.

Without limiting the application of the definition of joint actor, we may consider a related party to be a joint actor with the offeror in a bid, or with the acquirer in a business combination, if the related party becomes a control person of the issuer or a successor issuer upon completion of the transaction or if the related party, whether alone or with joint actors, beneficially owns securities with more than 20 per cent of the voting rights. We may also consider a related party's continuing equity interest in the issuer or a successor issuer upon completion of the transaction in making an assessment of joint actor status generally. A joint actor characterization could cause a bid to be regarded as an insider bid, or an otherwise arm's length transaction to be a regarded as a business combination, that requires preparation of a formal valuation.

~~**2.3 Director for Purposes of Section 1.2 - Liquid Market -** Subsection 1.2(3) of the Rule requires a letter to be sent to the Director for purposes of satisfying the liquid market test in certain circumstances. That letter should be sent to the Director, Take-over/Issuer Bids, Mergers & Acquisitions.~~

~~2.4~~2.3 Direct or Indirect Parties to a Transaction

(1) The ~~Rule~~Instrument makes references to direct and indirect parties to a transaction in the definition of connected transactions and in subparagraph 8.2(b)(i) regarding minority approval for a second step business combination. For the purposes of the ~~Rule~~Instrument, a person~~ or company~~ is considered to be an indirect party if, for example, a direct party to the transaction is a subsidiary entity, nominee or agent of the person~~ or company~~. A person~~ or company~~ is not an indirect party merely because it negotiates or approves the transaction on behalf of a party, holds securities of a party or agrees to support the transaction in the capacity of a security holder of a party.

(2) For the purposes of the ~~Rule, the Commission does~~Instrument, we do not consider ~~an entity~~a person to be a direct or indirect party to a business combination solely because the ~~entity~~person receives pro rata consideration in its capacity as a security holder of the issuer carrying out the business combination.

~~2.5~~2.4 Amalgamations - Under the ~~Rule~~Instrument, an amalgamation may be a business combination, related party transaction or neither, depending on the circumstances. For example, an amalgamation is a business combination for an issuer if, as a consequence of the amalgamation, holders of equity securities of the issuer become security holders of the amalgamated entity, unless an exception in one of the lettered paragraphs in the definition of business combination applies. An amalgamation is a related party transaction for an issuer rather than a business combination if, for example, a wholly-owned subsidiary entity of the issuer amalgamates with a related party of the issuer, leaving the equity securities of the issuer unaffected.

~~2.6~~2.5 Transactions Involving More than One Reporting Issuer - The characterization of a transaction or the availability of a valuation or minority approval exemption under the ~~Rule~~Instrument must be considered individually for each reporting issuer involved in the transaction. For example, an amalgamation may be a downstream transaction for one party and a business combination for the other, in which case the latter party is the only party to whom the requirements of the ~~Rule~~Instrument may apply.

~~2.7~~2.6 Previous Arm's Length Negotiations Exemption

(1) For the purposes of the formal valuation exemptions based on previous arm's length negotiations in paragraph ~~3~~(b) of subsection 2.4(1) and paragraph ~~3~~(b) of subsection 4.4(1) of the ~~Rule~~Instrument for insider bids and business combinations, respectively, the arm's length relationship must be between the selling security holder and all persons or companies that negotiated with the selling security holder.

(2) ~~The Commission notes~~We note that the previous arm's length negotiations exemption is based on the view that those negotiations can be a substitute for a valuation. An important requirement for the exemption to be available is that the offeror or proponent of the business combination, as the case may be, engages in "reasonable inquiries" to determine whether various circumstances exist. In ~~the Commission's~~our view, if this requirement cannot be satisfied through receipt of representations of the parties directly involved or some other suitable method, the offeror or proponent of the transaction is not entitled to rely on this exemption.

~~2.8~~2.7 Connected Transactions

(1) "Connected transactions" is a defined term in the ~~Rule~~Instrument, and reference is made to connected transactions in a number of parts of the ~~Rule~~Instrument. For example, subparagraph ~~2~~(~~c~~a)(iii) of section 5.5 of the ~~Rule~~Instrument requires connected transactions to be aggregated, in certain circumstances, for the purpose of determining the availability of the formal valuation exemption for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization. In other circumstances, it is possible for an issuer to rely on an exemption for each of two or more connected transactions. However, ~~the Commission~~we may intervene if ~~it believes~~we believe that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the ~~Rule~~Instrument.

(2) One method of acquiring all the securities of an issuer is through a plan of arrangement or similar process comprised of a series of two or more interrelated steps. The series of steps is the "transaction" for the purposes of the definition of business combination. However, a related party transaction that is carried out in conjunction with a business combination, and that is not simply one of the procedural steps in implementing the acquisition of the affected securities in the business combination, is subject to the ~~Rule~~Instrument's requirements for related party transactions. This applies where, for example, a related party buys some of the issuer's assets that the acquirer in the business combination does not want.

(3) An agreement, commitment or understanding that a security holder will tender to a ~~formal~~ bid or vote in favour of a transaction is not, in and of itself, a connected transaction to the bid or to the transaction for purposes of the ~~Rule~~Instrument.

~~2.9~~2.8 **Time of Agreement -** A number of provisions in the ~~Rule~~Instrument refer to the time a business combination or related party transaction is agreed to. This should be interpreted as the time the issuer first makes a legally binding commitment to proceed with the transaction, subject to any conditions such as security holder approval. Where the issuer does not technically negotiate the transaction with another party, such as in the case of a share consolidation, the time the transaction is agreed to should be interpreted as the time at which the issuer's board of directors determines to proceed with the transaction, subject to any conditions.

~~2.10~~2.9 **"Acquire the Issuer" -** In some definitions and elsewhere in the ~~Rule~~Instrument, reference is made to a transaction in which a related party would "directly or indirectly acquire the issuer … through an amalgamation, arrangement or otherwise, whether alone or with joint actors". This refers to the acquisition of all of the issuer, not merely the acquisition of a control position. For example, a related party "acquires" an issuer when it acquires all of the securities of the issuer that it does not already own, even if that related party held a control position in the issuer prior to the transaction.

PART 3 MINORITY APPROVAL

3.1 Meeting Requirement - The definition of minority approval and subsections 4.2(2) and 5.3(2) of the ~~Rule~~Instrument provide that minority approval, if required, must be obtained at a meeting of holders of affected securities. The issuer may be able to demonstrate that holders of a majority of the securities that would be eligible to be voted at a meeting would vote in favour of the transaction under consideration. In this circumstance, the ~~Director~~regulator or the securities regulatory authority will consider granting an exemption under section 9.1 of the ~~Rule~~Instrument from the requirement to hold a meeting, conditional on security holders being provided with disclosure similar to that which would be available to them if a meeting were held.

3.2 Second Step Business Combination Following an Unsolicited Take-over Bid - Section 8.2 of the ~~Rule~~Instrument allows the votes attached to securities acquired under a ~~formal~~ bid to be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if certain conditions are met. One of the conditions is that the security holder that tendered the securities in the bid not receive an advantage in connection with the bid, such as a collateral benefit, that was not available to other security holders. There may be circumstances where this condition could cause difficulty for an offeror who wishes to acquire all of an issuer through a business combination following a bid that was unsolicited by the issuer. For example, in order to establish that a benefit received by a tendering security holder is not a collateral benefit under the ~~Rule~~Instrument, the offeror may need the cooperation of an independent committee of the offeree issuer during the bid. This cooperation may not be forthcoming if the bid is unfriendly. In this type of circumstance, the fact that the bid was unsolicited would normally be a factor the ~~Director~~regulator or the securities regulatory authority would take into account in considering whether exemptive relief should be granted to allow the securities to be voted.

3.3 Special Circumstances - As the purpose of the ~~Rule~~Instrument is to ensure fair treatment of minority security holders, abusive minority tactics in a situation involving a minimal minority position may cause the ~~Director~~regulator or the securities regulatory authority to grant an exemption from the requirement to obtain minority approval. Where an issuer has more than one class of equity securities, exemptive relief may also be appropriate if the ~~Rule~~Instrument's requirement of separate minority approval for each class could result in unfairness to security holders who are not interested parties, or if the policy objectives of the ~~Rule~~Instrument would be accomplished by the exclusion of an interested party's votes in one or more, but not all, of the separate class votes.

PART 4 ~~FORM 33~~ DISCLOSURE

4.1 Insider Bids ~~- Form 33~~ Disclosure ~~- Form 32 of the Regulation (the form for a take-over bid circular)~~ - Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form ~~33 of the Regulation,~~62-104F1 *Take-Over Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids,* and in Ontario, Form 62-504F1 *Take-Over Bid Circular* of OSC Rule 62-504 Take-Over Bids and Issuer Bids, and by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids,* appropriately modified. In ~~the~~our view ~~of the Commission~~, Form ~~33~~62-104F2 and in Ontario, Form 62-504F2, disclosure would generally include, in addition to Form ~~32~~62-104F1 and in Ontario, Form 62-504F1, disclosure, disclosure for the following items, with necessary modifications, in the context of an insider bid:

1. Item ~~10 - Reasons for Bid~~9 – Purpose of the bid
2. Item ~~14~~13 - Acceptance of ~~Bid~~issuer bid
3. Item ~~15~~14 - Benefits from ~~Bid~~the bid
4. Item ~~17~~16 - Other ~~Benefits to Insiders, Affiliates and Associates~~benefits
5. Item ~~18~~17 - Arrangements ~~Between Issuer and Security Holder~~between issuer and security holders
6. Item ~~19~~18 - Previous ~~Purchases~~purchases and ~~Sales~~sales
7. Item ~~21~~20 - Valuation
8. Item 23 - Previous distribution
~~8.~~ 9. Item 24 - ~~Previous Distribution~~Dividend policy
~~9.~~ 10. Item 25 - ~~Dividend Policy~~Tax consequences
~~10.~~11. Item 26 - ~~Tax Consequences~~ ~~11. Item 27 -~~ Expenses of ~~Bid~~bid

4.2 Business Combinations and Related Party Transactions ~~- Form 33~~ Disclosure - Paragraphs 4.2(3)(a) and 5.3(3)(a) of the ~~Rule~~Instrument require in the information circulars for a business combination and a related party transaction, respectively, the disclosure required by Form ~~33 of the Regulation,~~62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids,* to the extent applicable and with necessary modifications. In ~~the~~our view ~~of the Commission~~, Form ~~33~~62-104F2, and in Ontario, Form 62-504F2, disclosure would generally include disclosure for the following items, with necessary modifications, in the context of those transactions:

1. Item ~~5~~ 4 - Consideration ~~Offered~~
2. Item ~~10 - Reasons for Bid~~9 – Purpose of the bid
3. Item ~~11~~10 - Trading in ~~Securities~~securities to be ~~Acquired~~acquired
4. Item ~~12~~11 - Ownership of ~~Securities~~securities of ~~Issuer~~issuer
5. Item ~~13~~12 - Commitments to ~~Acquire Securities of Issuer~~acquire securities of issuer
6. Item ~~14~~13 - Acceptance of ~~Bid~~issuer bid
7. Item ~~15~~14 - Benefits from ~~Bid~~the bid
8. Item ~~16~~15 - Material ~~Changes in the Affairs of Issuer~~changes in the affairs of issuer
~~9. Item 17 - Other Benefits to Insiders, Affiliates and Associates~~
9. Item 16 - Other benefits
10. Item ~~18~~17 - Arrangements ~~Between Issuer and Security Holder~~between issuer and security holders
11. Item ~~19~~18 - Previous ~~Purchases~~purchases and ~~Sales~~sales
12. Item ~~20~~19 - Financial ~~Statements~~statements
13. Item ~~21~~20 - Valuation
14. Item ~~22~~21 - Securities of ~~Issuer~~issuer to be ~~Exchanged~~exchanged for ~~Others~~others
15. Item ~~23~~22 - Approval of ~~Bid~~issuer bid circular
16. Item ~~24~~23 - Previous ~~Distribution~~distribution
17. Item ~~25~~24 - Dividend ~~Policy~~policy
18. Item ~~26~~25 - Tax ~~Consequences~~consequences
19. Item ~~27~~26 - Expenses of ~~Bid~~bid
20. Item ~~28 - Judicial Developments~~29 - Other material information
21. ~~Item 29 - Other Material Facts~~22. Item 30 - Solicitations

PART 5 FORMAL VALUATIONS

5.1 General

(1) The ~~Rule~~Instrument requires formal valuations in a number of circumstances. ~~The Commission is~~We are of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of a valuation does not by itself fulfil this requirement.

(2) The disclosure standards for formal valuations in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators each generally represent a reasonable approach to meeting the applicable legal requirements. Specific disclosure standards, however, cannot be construed as a substitute for the professional judgment and responsibility of the valuator and, on occasion, additional disclosure may be necessary.

(3) An issuer that is required to obtain a formal valuation, or the offeree issuer in the case of an insider bid, should work in cooperation with the valuator to ensure that the requirements of the ~~Rule~~Instrument are satisfied. At the valuator's request, the issuer should promptly furnish the valuator with access to the issuer's management and advisers, and to all material information in the issuer's possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information on which the formal valuation is based. The valuator should form its own independent views of

the reasonableness of this information, including any forecasts, projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions on which it is based, and adjust the information accordingly.

(4) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances. In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator.

(5) Subsection 2.3(2) of the ~~Rule~~Instrument provides that in the context of an insider bid, an independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to, determine who the valuator will be and supervise the preparation of the formal valuation. Although the subsection also requires the independent committee to use its best efforts to ensure that the valuation is completed and provided to the offeror in a timely manner, ~~the Commission is~~we are aware that an independent committee could attempt to use the subsection to delay or impede an insider bid viewed by the committee as unfriendly. In a situation where an offeror is of the view that an independent committee is not acting in a timely manner in having the formal valuation prepared, the offeror may seek relief under section 9.1 of the ~~Rule~~Instrument from the requirement that the offeror obtain a valuation.

(6) Similarly, in circumstances where an independent committee is of the view that a bid that has been announced will not actually be made or that the bid is not being made in good faith, the independent committee may apply for relief from the requirements of subsection 2.3(2) of the ~~Rule~~Instrument.

(7) ~~National Policy 48 – *Future Oriented Financial Information* does~~Requirements in securities legislation relating to forward-looking information do not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.

5.2 Independent Valuators - While, except in certain prescribed situations, the ~~Rule~~Instrument provides that it is a question of fact as to whether a valuator (which for the purposes of this section includes a person ~~or company~~ providing a liquidity opinion) is independent, situations have been identified in the past that raise serious concerns for ~~the Commission~~us. These situations, which are set out below, must be assessed for materiality by the board or committee responsible for choosing the valuator, and disclosed in the disclosure document for the transaction. In determining the independence of the valuator from an interested party, relevant factors may include whether

(a) the valuator or an affiliated entity of the valuator has a material financial interest in future business under an agreement, commitment or understanding involving the issuer, the interested party or an associated or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator was first contacted for the purpose of the formal valuation or opinion, the valuator or an affiliated entity of the valuator

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of the interested party, or an associated or affiliated entity of the interested party, other than the issuer,

(ii) had a material involvement in an evaluation, appraisal or review of the financial condition of the issuer, or an associated or affiliated entity of the issuer, if the evaluation, appraisal or review was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iii) acted as a lead or co-lead underwriter of a distribution of securities by the interested party, or acted as a lead or co-lead underwriter of a distribution of securities by the issuer if the retention of the underwriter was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iv) had a material financial interest in a transaction involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in a transaction involving the issuer other than by virtue of performing the services referred to in subparagraph (b)(ii) or (b)(iii)~~;~~, or

(c) the valuator or an affiliated entity of the valuator is

(i) a lead or co-lead lender or manager of a lending syndicate in respect of the transaction in question, or

(ii) a lender of a material amount of indebtedness in a situation where the interested party or the issuer is in financial difficulty, and the transaction would reasonably be expected to have the effect of materially enhancing the lender's position.

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(2)(d), 3.2(~~e~~d), 4.2(3)(~~f~~e), 5.2(1)(e) and 5.3(3)(~~f~~e) of the ~~Rule~~Instrument require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the ~~Rule~~Instrument should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the ~~Rule~~Instrument are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, ~~the Commission is~~we are of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing ~~the Commission's~~our interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the ~~Rule~~Instrument only mandates an independent committee in limited circumstances, ~~the Commission is~~we are of the view that it generally would be appropriate for issuers involved in a material transaction to which the ~~Rule~~Instrument applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, ~~the Commission~~we also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in ~~the Commission's~~our view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in ~~the Commission's~~our view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

(8) We recognize that directors who serve on a special committee or independent committee must be adequately compensated for their time and effort. However, members of the committee should ensure that compensation for serving on the committee will not compromise their independence. Subsection 7.1(3) of the Instrument prohibits members of an independent committee reviewing a transaction from receiving any payment that is contingent on completion of the transaction. We are of the view that the compensation of committee members should ideally be set when the committee is created and be based on fixed sum payments or the work involved.

NOTICE OF FINAL RULE UNDER THE SECURITIES ACT
RULE 61-801 *IMPLEMENTING MULTILATERAL INSTRUMENT 61-101*
PROTECTION OF MINORITY SECURITY HOLDERS
IN SPECIAL TRANSACTIONS

Introduction

The Ontario Securities Commission (the "OSC" or the "Commission") has, pursuant to section 143 of the *Securities Act* (Ontario) (the "Act"), made OSC Rule 61-801 *Implementing Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions* (the "Implementing Rule"). The Commission published the Implementing Rule for comment on August 25, 2006 (the "Proposed Rule").

The Implementing Rule was delivered to the Minister of Finance (the "Minister") on December 6, 2007. The Commission has requested expedited review of the Implementing Rule by the Minister. If the Minister approves the Implementing Rule by January 17, 2008, the Implementing Rule will come into force on February 1, 2008. If the Minister does not approve or reject the Implementing Rule or return the Implementing Rule for further consideration, the Implementing Rule will come into force on February 19, 2008.

Substance and Purpose

The Implementing Rule is a local rule implementing Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("MI 61-101") in Ontario. The Implementing Rule revokes Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*, an Ontario rule that will be replaced by MI 61-101. The Implementing Rule also makes consequential amendments to Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, the Ontario rule which implements National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Summary of Comments and Responses

No comments were received on the Proposed Rule and no significant issues or concerns in relation to the Proposed Rule were brought to the attention of the Commission during the comment period.

Changes to the Proposed Rule

The Commission has made non-material changes to the Proposed Rule.

Text of the Implementing Rule

The text of the Implementing Rule follows.

December 14, 2007

ONTARIO SECURITIES COMMISSION
RULE 61-801 *IMPLEMENTING MULTILATERAL INSTRUMENT 61-101*
PROTECTION OF MINORITY SHAREHOLDERS IN SPECIAL TRANSACTIONS

1.1 **Rule 61-501** – Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* is revoked.

1.2 **Rule 71-802** – Section 2.4 of Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by:

(i) replacing the title "Going Private Transactions and Related Party Transactions" with the title "Business Combinations and Related Party Transactions", and

(ii) replacing the words "Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*" with "MI 61-101 *Protection of Minority Security Holders in Special Transactions*".

1.3 **Effective Date** – This rule comes into force on February 1, 2008.

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