

Notice

Multilateral Instrument 62-104
Take-Over Bids and Issuer Bids,
Form 62-104F1, Form 62-104F2, Form 62-104F3, Form 62-104F4, and Form 62-104F5
and
Notice of Consequential Amendments to
National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and*
Insider Reporting Issues

November 16, 2007

Introduction

We, the Canadian Securities Administrators (CSA), are adopting Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104 or the Rule) and related forms (the Forms and, together with MI 62-104, are referred to as the Instrument). The Rule harmonizes and consolidates take-over and issuer bid regimes across the CSA Jurisdictions, other than Ontario.

In Ontario, the government is seeking to achieve the same harmonization and streamlining effect as the Instrument through proposed amendments to Part XX - Take-Over Bids and Issuer Bids of the *Securities Act* (Ontario) (Revised Part XX) introduced in Schedule 38 to Bill 187 *Budget Measures and Interim Appropriation Act, 2007*, and by adoption of Ontario Securities Commission (OSC) Rule 62-504 *Take-Over Bids and Issuer Bids* (Rule 62-504).

We are also adopting National Policy 62-203 *Take-Over Bids and Issuer Bids* (the Policy), which provides guidance about the Rule, as well as guidance about the Revised Part XX and OSC Rule 62-504.

In addition to the Rule, the Forms and the Policy, we are making consequential amendments (the Consequential Amendments) to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103).

MI 62-104 and the Forms have been made or are expected to be made by each member of the CSA except Ontario. The Consequential Amendments have been made or are expected to be made by each member of the CSA including Ontario. We also expect the Policy will be adopted in all jurisdictions including Ontario.

In Québec, the Instrument and the Consequential Amendments are regulations made under section 331.1 of the Quebec Securities Act and the instruments must be approved, with or without amendment, by the Minister of Finance. The regulations will come into force on the date of their publication in the Gazette officielle du Québec or on any later date specified in the regulation. They must also be published in the Bulletin.

Provided all necessary ministerial approvals are obtained, the Rule, the Forms, and the Consequential Amendments will come into force on February 1, 2008. The Policy will also come into effect on February 1, 2008.

Subject to all necessary approvals, the OSC has requested that the Revised Part XX be proclaimed into force on February 1, 2008 and that Rule 62-504 come into force the same date.

Background

We first published the Instrument for comment on April 28, 2006 (the 2006 Proposed Instrument). The comment period expired in August 2006. After considering the comments, we revised the Instrument and the Policy and are publishing the final version today.

Changes to MI 62-104 since the publication of the 2006 Proposed Instrument

The Instrument contains several non-material changes to the 2006 Proposed Instrument. The following are the most significant changes to the Instrument.

Acting jointly or in concert

The 2006 Proposed Instrument deemed all persons acting together with an offeror to either acquire or vote shares to be acting jointly and in concert. The Rule was amended, so that affiliates and those persons acquiring shares in concert with an offeror are deemed to be acting jointly and in concert with the offeror, while associates and those voting shares with the offeror will continue to be subject to a rebuttable presumption. There is also a carve-out for registered dealers acting solely in an agency capacity for the offeror.

Restrictions on varying bids

The 2006 Proposed Instrument added several restrictions to bid variations. We removed these restrictions from the Rule, and instead we clarified in the Policy that the CSA will rely upon its public interest mandate to investigate any apparent abuse of the bid process through variations that negatively impact security-holders.

Collateral benefits

The 2006 Proposed Instrument excluded employment arrangements from the prohibition against collateral benefit where the security holder receiving the benefit owned less than 1% of the relevant class of outstanding securities, or if the value of the benefit, as determined by an independent committee of the target, was less than 5% of the consideration that the holder would receive from the offeror. We have now revised the Rule to add an additional exemption for “value for value” transactions, and have included information about determining value in the Policy.

Private agreement exemption

In order to address ambiguities in interpretation of the private agreement exemption in existing securities legislation, the 2006 Proposed Instrument added additional requirements for offerors. Based on the comments received, we agreed that amendments to the exemption should not be made without further research and analysis.

Filing agreements

The 2006 Proposed Instrument created new filing requirements for an offeror. To address concerns that the offeror would not be able to ensure filing of all relevant offeree documents, the Rule now includes a similar filing obligation for offeree issuers, and has added a right of redaction, so confidential portions of material agreements may be blacked out before filing.

Restrictions on acquisitions during take-over bid

Section 2.2 of MI 62-104 clarifies that an offeror wishing to rely on the exception to the restriction on acquisitions during a take-over bid must have, on the date of the bid, an intention to make purchases during the bid and must state that intention in the bid circular. We have further amended paragraph 2.2(3)(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.

Foreign take-over bid and issuer bid exemption

We have revised the disclosure required to rely on the foreign take-over bid or foreign issuer bid exemption to require that non-English bid materials that are sent to Canadian security holders must be accompanied by a brief summary of the key terms of the bid prepared in English, and in Quebec in French or French and 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, paragraphs 4.4(g) and 4.10(g) of MI 62-104 require that an advertisement be published in the relevant jurisdiction of Canada in at least one major daily newspaper specifying where and how security holders may obtain a copy of, or access to, the bid documents.

Summary of Written Comments Received by the CSA

During the comment period, and shortly after the expiry of the comment period, we received submissions from 13 commenters on the Instrument. We have considered the comments received and thank all the commenters. The names of the 13 commenters and a summary of the comments on the Instrument, together with our responses, are contained in Appendix A to this Notice.

After considering the comments, we have made amendments to the Rule, the Forms, and the Policy. However, as these changes are not material, we are not republishing the Instrument or the Policy for a further comment period.

Consequential amendments

National Amendments

Amendments that have been made to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* are set out in Appendix B to this Notice.

Local Amendments

We are amending or repealing elements of local securities legislation and securities directions, in conjunction with implementing the Instrument. The provincial and territorial securities regulatory authorities may publish, or may have published, these local changes in their local jurisdictions.

Questions

Please refer your questions to any of:

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Appendix A

Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*

Summary of Comments and CSA Responses

Part I List of Commenters

1. Global Financial Group Inc on behalf of e-globe x-change inc.
2. Market Regulation Services Inc.
3. Canadian Advocacy Committee of the CFA Societies of Canada
4. Davies Ward Phillips & Vineberg LLP
5. Fasken Martineau DuMoulin LLP
6. Fraser Milner Casgrain LLP
7. McCarthy Tétrault LLP
8. Ogilvy Renault LLP
9. Ontario Bar Association - Securities Law Subsection
10. Osler, Hoskin & Harcourt LLP
11. Torys LLP
12. Ontario Teachers' Pension Plan Board
13. Stikeman Elliott LLP

In this summary of comments and responses, we grouped similar comments together and have provided a single response. We categorized these comments into broad themes and described these themes in the headings to the comments. Following our description of these themes, we set out the comments we received on our specific questions, together with our responses. The CSA received a number of favourable comments and drafting suggestions that are not specifically addressed in this summary of comments and responses. The CSA appreciates these comments as they have greatly assisted in redrafting the Instrument and, where applicable, many of the drafting suggestions are included in the Instrument.

1. Overall support for the Instrument

Commenters supported the CSA in its efforts to harmonize and consolidate take-over and issuer bid regimes.

Response

The CSA acknowledges these expressions of support for this initiative.

2. Definitions

A number of comments were made regarding general drafting revisions throughout Part 1 "Definitions and Interpretations".

Response

We agree with many of the comments, and have made the corresponding revisions to the definitions and interpretive provisions. For example,

- (i) we have added a new definition of “designated exchange” in subsection 4.8(1) that contemplates local designation of exchanges in the future and replaces the previous definition of “recognized exchange”, and
- (ii) we have added a new subsection to the definition of “beneficial ownership” to clarify that a person is not the beneficial owner of securities solely because that person had agreed to deposit securities under a lock-up or support agreement.

3. *Acting jointly or in concert*

A number of commenters opposed the change from the rebuttable presumption that persons acting together with an offeror to vote shares, as well as affiliates and associates of an offeror, were acting jointly or in concert with the offeror, to a deeming provision. Other commenters felt that a specific carve-out for lock-up agreements between the offeror and security holders of the offeree issuer should be included.

Response

We have revised the definition to provide that a person will continue to be presumed, rather than deemed, to be acting jointly and in concert if that person has entered into a voting agreement with the offeror. We have also included a carve-out for security holders who agree to sell their securities to the offeror pursuant to a lock-up agreement.

4. *Integration Rules*

One commenter suggested that section 2.2(3) of the Instrument should be amended to restrict its use to situations where (a) the offeror, including joint actors, will own an aggregate of not more than 20% of the shares of the target company and (b) the offeror pays no more for the shares than the bid price. Several commenters asked for clarification on several points in this subsection regarding the marketplaces on which trading would be allowed, the time frame for purchases, the date at which the intention for such purchases is to be determined and the application of the restrictions in paragraphs 2.2(3) (e), (f) and (g) to take-over bids.

Response

We have decided against restricting the use of the exemption to acquisitions that would give the offeror an aggregate of more than 20% of the shares of the offeree issuer. We believe that this is an issue that is better addressed on a case-by-case basis and not through a broad policy change. We believe that the current public interest mandate of the CSA is broad enough to deal with any instances of abuse that may arise.

Exempt normal-course acquisitions may be made through the facilities of a published market. The time frames for purchases have been clarified to only apply to purchases made during the currency of the bid. The intention to acquire securities is required to be a current intention and is determined as of the date of the take-over bid circular or notice of change. We have further amended paragraph 2.2(3)(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. The restrictions in paragraphs 2.2(3)(e), (f) and (g) are not new and incorporate requirements currently imposed in Ontario under Rule 62-501.

5. *Communication with security holders*

Commenters suggested making use of National Instrument 54-101 *Communication With Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) by requiring both offerors and offeree issuers to deliver bid documents to both registered and beneficial shareholders.

Response

Offerors have an interest in ensuring that both registered and beneficial shareholders receive bid document and therefore, the CSA does not propose to amend NI 54-101 to require its application to a bid.

6. *Variation of terms*

A commenter suggested that subsection 2.10(6) be deleted and the requirement to issue and file a news release announcing a waiver of a condition should be included in subsection 2.10(4).

Response

We agree with the comment and have made the suggested change.

7. *Information in bid circular*

A commenter suggested that the information in the bid circular should only be required to be current as of 3 business days prior to the commencement of the bid to allow for the printing and mailing of the bid circular.

Response

We disagree. The information in the bid circular must be current as of the date that the bid is mailed and it is the offeror's obligation to ensure this. We do not propose any changes at this time.

8. *Restrictions on Varying Bids*

Most commenters were opposed to the new restrictions on varying bids after the commencement of a take-over bid. The commenters pointed out that many of the prohibited changes may, under certain circumstances, actually be necessary.

Response

We have removed the prohibition against varying the terms of a bid from the Instrument, but indicated in the Policy circumstances where a variation of the terms of a bid may be so significant that a notice of variation would not provide security holders of the offeree issuer sufficient time or disclosure. Depending on the circumstances, we reserve the right to exercise our public interest mandate to ensure that offeree security holders are not prejudiced.

9. *Collateral Agreements*

Commenters made various suggestions regarding clarifications in the drafting, which have been addressed.

Two commenters suggested that we include a definition of “independence” or “independent committee”. In addition, some commenters were concerned about the ability of the independent committee to value a benefit, or to give the required approval in the face of a hostile bid.

One commenter felt that the de minimis tests were not appropriate; another commenter suggested that we add an additional exemption for non-employment related benefits, and provide an “equivalent value” exemption.

Finally, two commenters noted that, while the new exemption is an improvement on existing law, it does not address the fundamental interpretation problem that exists in the use of the phrase “consideration of greater value”.

Response

We have provided additional guidance in the Policy as to the meaning of “independence” and “independent committee”. In the case of a hostile bid, the bidder may need to apply for exemptive relief.

We believe that the de minimis test is appropriate even in the context of a bid, as it allows for benefits that are minor, either in absolute terms or in relation to the consideration paid to the shareholder receiving the benefit. We are not prepared to expand the exemption beyond employment benefits at this time, however, we have added the concept of an “equivalent value” exemption, where the independent committee determines that equivalent value is being provided in exchange for the benefit and have provided information on determining whether an equivalent value transaction exists.

We believe that the interpretation of the phrase “consideration of greater value” is better addressed through its application to specific facts.

10. Proportionate take up and payment

Two commenters asked for clarification of section 2.23(2) (now section 2.26(2)) of the 2006 Proposed Instrument, and one felt that section 2.23(3) (now section 2.26(3)) should not completely remove the requirement to take up proportionately in a modified Dutch auction bid. Two commenters also suggested that there was some uncertainty as to the effect of subsection (4) on the pro-ration factor for a partial bid and the ability of the seller in the pre-bid transaction to participate in the bid.

Response

We have amended both sections 2.26(2) and (3) for greater clarification. The purpose of subsection (4) is to ensure that a security holder who sells securities under a pre-bid transaction does not sell a greater total proportion of its shares by tendering additional shares under the offer. A seller can participate to the extent that the partial bid is for a greater percentage of securities than the percentage previously bought from the seller.

11. Withdrawal

One commenter asked for clarification of the relationship between withdrawal rights and the ability of an offeror to take up securities deposited under the bid. Another commenter suggested

that the section is unclear as to whether a variation that consists of an increase in the consideration of a cash bid together with a waiver of conditions would extend withdrawal rights.

Response

We believe that no changes are necessary, as security holders are adequately protected by withdrawal rights and no issues have arisen in the past regarding this section. The section has been amended to clarify that an increase in consideration of a cash bid combined with a waiver of conditions would not extend withdrawal rights.

12. *Take up and payment for deposited securities*

One commenter notes there is an inconsistency between subsection 2.10(3) and subsection 2.29(4) (now 2.30(4)) and suggests adding “notwithstanding s. 2.29(4)” to subsection 2.10(3) and “subject to subsection 2.10(3)” to subsection 2.29(4) (now 2.30(4)).

Response

We don’t believe there is an inconsistency between these two sections as one relates to the deposit period and the other to take up. Under section 2.29 (now 2.30) an offeror must first take up the deposited securities before extending, but is still required to extend the deposit period by 10 days, unless an exception applies under section 2.10

13. *Filing Agreements*

Three commenters supported the requirement for filing of agreements by the offeror but suggested that there should be a corresponding obligation on offerees. Other commenters suggested that the offeror should have a right to redact potential prejudicial or confidential information. And one commenter asked for guidance in the Policy as to what agreements are to be filed.

Response

We have created an obligation for offeree issuers to file agreements which mirrors the filing requirements in 12.1(1)(c) and 12.3 of National Instrument 51-102 *Continuous Disclosure Requirements*, and added a right of redaction to all filed agreements.

14. *Private Agreement Exemption*

One commenter noted that the proposed exemption provides needed clarity to the exemption and aligns the exemption with its originally intended purpose. This commenter suggests, as an alternative, to eliminate the 15% premium and restrict the use of the exemption to once every two years. Four commenters suggested that in lieu of adopting the proposed changes to the exemption, interpretive guidance as to the availability of the private agreement exemption should be included in the companion policy. In addition, the guidance should address times when serial reliance on the private agreement exemption would be found to be abusive and on limiting reliance on the exemption in those circumstances.

In addition, we received several general comments expressing the opinion that the existing statutory requirements were workable and well established, and, absent a demonstrated abuse, did not require amendment. Some commenters also felt that both the 6-month purchase limitation and the one-time use limitation would be impracticable in application.

Response

We have considered all of the comments that we received and agree that a change to the private agreement exemption should not be made without further research and analysis. Accordingly, we have substantially reverted to the current requirements found in securities legislation, and intend to revisit this issue in the near future.

15. Foreign take-over bid and issuer bid exemptions

Commenters made several drafting suggestions, including a request for clarification that consideration not be required to be identical, and that an offeree issuer does not need to be a foreign issuer in order to qualify for either the foreign take-over bid exemption, or the foreign issuer-bid exemption.

One commenter suggested that an offeror should be able to rely exclusively on the list of registered shareholders of the target company as conclusive evidence of the number of outstanding voting securities that are owned, directly or indirectly, by Canadian residents.

One commenter suggested that persons that have entered into lock-up agreements with the offeror should not be included in the threshold calculations, as those persons have already made their investment decisions.

Response

We did not agree that the reference to consideration required clarification, as the subsection requires the consideration to be “at least as favourable”, but not identical in form. We also did not add a clarification to either the foreign take-over bid or the foreign issuer bid exemptions, as the exemptions are available to any offeror that meets the requirements of the exemption. The reference in the title of the section to “foreign” is intended to refer to the bid as being made in compliance with the laws of a foreign jurisdiction, and not to the jurisdiction of the target issuer.

We have removed the guidance previously provided on determining beneficial ownership because we are of the view that it is up to the bidder to determine whether they have taken all necessary steps to determining whether it falls within the relevant exemption.

We disagree with the comment that security holders who have entered into lock-up agreements should not be included in threshold calculations.. The purpose of the threshold is to determine the extent of Canadian ownership of the offeree issuer independent of any tendering decision.

16. De minimis exemption

One commenter suggested that an offeror should be able to presume that the exemption is available in local jurisdictions based on either publicly available information or, in the context of an unsolicited offer, where a friendly bidder with access to the offeror’s books has relied on the same exemption.

Response

We have removed the guidance previously provided on determining beneficial ownership because we are of the view that it is up to the bidder to determine whether they have taken all necessary steps to determining whether it falls within the relevant exemption.

17. Normal course issuer bid exemption

One commenter suggested that this exemption be restricted to purchase orders that are entered on a marketplace at a price which is at or below the best ask price.

Another commenter suggested expanding the exemption to allow for 10% of public float to be repurchased, as is permitted by the TSX in a normal course issuer bid made under TSX rules.

Response

We have decided not to restrict the exemption, as there is no evidence that the exemption has been abused. We have also decided not to expand the exemption any further at this time.

We have clarified the exemption to indicate that an issuer bid made in the normal course through the facilities of a designated exchange is exempt from Part 2 if the bid is made in accordance with the bylaws, rules, regulations and policies of that exchange.

18. Exchange take-over bid exemption

One commenter notes that the exemption for take-over bids made through the facilities of a designated exchange found in existing take-over bid legislation has not been carried forward into the Instrument and encourages the CSA to set out the reasons for this exemption not being carried forward in a notice or otherwise.

Response

The CSA decided not to carry this exemption forward into the Instrument because both TSX and the TSX Venture Exchange have recently repealed their rules governing take-over bids. We have decided that only normal course issuer bids will be permitted through a designated exchange but all other bids, exempt or otherwise, will have to be made in compliance with the Instrument.

19. Additional exemptions and early warning requirements

One commenter suggested that the issuer bid exemption in NI 45-106 and the early warning requirements in NI 62-103 should be consolidated into this Instrument.

Response

We have determined that the issuer bid exemption in NI 45-106 is appropriately located in that Instrument, but we will consider consolidating the early warning requirements in NI 62-103 in the future.

SCHEDULE B

Amendments to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*

PART 1 AMENDMENTS

1.1 National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* is amended by this instrument:

(a) *in section 1.1(1)*

(i) *by adding 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) *by repealing the definition of "early warning requirements" and substituting:*

"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) *by repealing the definition of "formal bid" and substituting:*

"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) *by adding the following before the definition of “moratorium provisions”:*

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

(v) *by repealing the definition of "moratorium provisions" and substituting:*

"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) ***by repealing the definition of "offeror" and substituting:***

"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) ***by repealing the definition of "offeror's securities" and substituting:***

"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) ***by repealing the definition of "private mutual fund" and substituting:***

"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), by striking "section 2.1 of National Instrument 62-102 Disclosure of Outstanding Share Data or"***;

(c) ***by repealing subsection 5.1(b) and substituting:***

(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) Appendix B ***is repealed.***

(e) Appendix C ***is repealed.***

(f) Appendix D ***is repealed and the following is substituted:***

**NATIONAL INSTRUMENT 62-103
APPENDIX D
BENEFICIAL OWNERSHIP**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALL JURISDICTIONS (except Ontario)	Sections 1.8 and 1.9 of MI 62-104
ALBERTA	Sections 5 and 6 of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Subsection 1(4) of the <i>Securities Act</i> (British Columbia)
MANITOBA	Subsections 1(6) and 1(7) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Subsections 1(5) and 1(6) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Subsections 2(5) and 2(6) of the <i>Securities Act</i> (Newfoundland and Labrador)
NOVA SCOTIA	Subsections 2(5) and 2(6) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Subsections 1(5) and 1(6) and sections 90 and 91 of the <i>Securities Act</i> (Ontario)
SASKATCHEWAN	Subsections 2(5) and 2(6) of <i>The Securities Act, 1988</i> (Saskatchewan); and

(g) in Appendix E

(i) by adding 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), by adding “, in Canadian dollars” after “value” and striking “and” at the end of the paragraph; and

(iii) by adding 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.

PART 2 EFFECTIVE DATE

2.1 These amendments are effective February 1, 2008.

MULTILATERAL INSTRUMENT 62-104
TAKE-OVER BIDS AND ISSUER BIDS

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MULTILATERAL INSTRUMENT 62-104
TAKE-OVER BIDS AND ISSUER BIDS

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument,

“Act” means, in the jurisdiction, the statute referred to in Appendix B to National Instrument 14-101 *Definitions*;

“associate”, 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, in Alberta, adult interdependent partner of that person, or
 - (ii) a relative of the person’s spouse or, in Alberta, adult interdependent partner

if the relative has the same home as that person;

“bid circular” means a bid circular prepared in accordance with section 2.10;

“business day” means a day other than a Saturday, a Sunday or a day that is a statutory holiday in the jurisdiction;

“class of securities” includes a series of a class of securities;

“consultant” has the same meaning as in National Instrument 45-106 *Prospectus and Registration Exemptions*;

“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;

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and also

includes an acquisition or redemption of securities of the issuer by the issuer from those persons, but does not include an offer to acquire or redeem, or an acquisition or redemption if

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

“offer to acquire” means

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not the offer has been solicited, or
- (c) any combination of the above;

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

“offeror” means, except in Division 1 of Part 2 of this Instrument, a person that makes a take-over bid, an issuer bid or an offer to acquire;

“offeror’s securities” means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person acting jointly or in concert with the offeror;

“person” 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;

“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;

“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;

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

“take-over bid” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20% or more of the outstanding securities of that class of securities at the date of the offer to acquire but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders.

Definitions for purposes of the Act

1.2(1) Except in Saskatchewan, in the Act,

- (a) **“offer to acquire”** has the same meaning as in this Instrument, and
- (b) **“offeror”** has the same meaning as in section 1.1 of this Instrument.

(2) In the definition of **“issuer bid”** in the Act, the prescribed class of issuer bids is that set out in the definition of **“issuer bid”** in this Instrument.

(3) In the definition of **“take-over bid”** in the Act, the prescribed class of take-over bids is that set out in the definition of **“take-over bid”** in this Instrument.

Affiliate

1.3 In this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.4 In this Instrument, a person controls a second person if

- (a) the first 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 first person to elect a majority of the directors of the second person, unless the first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Computation of time

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

Expiry of bid

1.6 A take-over bid or an issuer bid expires at the later of

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

Convertible securities

1.7 In this Instrument,

- (a) a security is deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer, and
- (b) a security that is convertible into a security of another class is deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed beneficial ownership

1.8(1) In this Instrument, in determining the beneficial ownership of securities of an offeror or of any person acting jointly or in concert with the offeror, at any given date, the offeror or the

person is deemed to have acquired and to be the beneficial owner of a security, including an unissued security, if the offeror or the person

- (a) is the beneficial owner of a security convertible into the security within 60 days following that date, or
- (b) has a right or obligation permitting or requiring the offeror or the person, whether or not on conditions, to acquire beneficial ownership of the security within 60 days by a single transaction or a series of linked transactions.

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

(3) If 2 or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to the offer or offers to acquire are deemed to be securities subject to the offer to acquire of each offeror for the purpose of determining whether an offeror is making a take-over bid.

(4) In this section, an offeror is not a beneficial owner of securities solely because there is an agreement, commitment or understanding that a security holder will tender the securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

(5) 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.

Acting jointly or in concert

1.9 (1) In this Instrument, it is a question of fact as to whether a person is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing,

- (a) the following are deemed to be acting jointly or in concert with an offeror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
 - (ii) an affiliate of the offeror;
- (b) the following are presumed to be acting jointly or in concert with an offeror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any person acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer;

- (ii) an associate of the offeror.

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

(3) For the purposes of this section, a person is not acting jointly or in concert with an offeror solely because there is an agreement, commitment or understanding that the person will tender securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

Application to direct and indirect offers

1.10 In this Instrument, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities includes a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

Determination of market price

1.11(1) In this Instrument,

- (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 4.1, 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 who was not acting jointly or in concert with the offeror.

PART 2: BIDS

Division 1: Restrictions on Acquisitions or Sales

Definition of “offeror”

2.1 In this Division, “**offeror**” means

- (a) a person making a take-over bid or an issuer bid that is not exempt from Part 2,
- (b) a person acting jointly or in concert with a person referred to in paragraph (a),
- (c) a control person of a person referred to in paragraph (a), or
- (d) a person acting jointly or in concert with a control person referred to in paragraph (c).

Restrictions on acquisitions during take-over bid

2.2 (1) An offeror must not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid or securities convertible into securities of that class otherwise than under the bid on and from the day of the announcement of the offeror’s intention to make the bid until the expiry of the bid.

(2) Subsection (1) 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 take-over bid that is not exempt from Part 2, deposit the security holder's securities under the bid.

(3) Despite subsection (1), an offeror may purchase securities of the class that are subject to a take-over bid and securities convertible into securities of that class beginning on the 3rd business day following the date of the bid until the expiry of the bid if 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 number of securities beneficially acquired under this subsection does not exceed 5% of the outstanding securities of that class as at the date of the bid;
- (c) the purchases are made in the normal course on a published market;
- (d) 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 referred to in paragraph 2.1(b), (c) or (d), 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;

- (e) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (f) 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;
- (g) the offeror or any person 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;
- (h) the seller or any person 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.

(4) For the purposes of paragraph 2.2(3)(b), the acquisition of beneficial ownership of securities that are convertible into securities of the class that is subject to the bid shall be deemed to be an acquisition of the securities as converted.

Restrictions on acquisitions during issuer bid

2.3(1) An offeror must not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to an issuer bid, or securities that are convertible into securities of that class, otherwise than under the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not prevent the offeror from purchasing, redeeming or otherwise acquiring any securities of the class subject to the bid in reliance on an exemption under paragraph 4.6(a), (b) or (c).

Restrictions on acquisitions before take-over bid

2.4(1) If, within the period of 90 days immediately preceding a take-over bid, an offeror acquired beneficial ownership of securities of the class subject to the bid in a transaction not generally available on identical terms to holders of that class of securities,

- (a) the offeror must offer
 - (i) consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any such prior transaction, or
 - (ii) at least the cash equivalent of that consideration, and
- (b) the offeror must offer to acquire under the bid that percentage of the securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in any such prior transaction was of

the total number of securities of that class beneficially owned by that seller at the time of that prior transaction.

(2) Subsection (1) does not apply to a transaction that occurred within 90 days preceding the 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.

Restrictions on acquisitions after bid

2.5 During the period beginning with the expiry of a take-over bid or an issuer bid and ending at the end of the 20th business day after that, whether or not any securities are taken up under the bid, an offeror must not acquire or offer to acquire beneficial ownership of securities of the class that was subject to the bid except by way of a transaction that is generally available to holders of that class of securities on identical terms.

Exception

2.6 Subsection 2.4(1) and section 2.5 do 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 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;
- (d) the seller or any person 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.

Restrictions on sales during bid

2.7(1) An offeror, except under a take-over bid or an issuer bid, must not sell, or make or enter into an agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, beginning on the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

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

(3) Subsection (1) does not apply to an offeror under an issuer bid in respect of the issue of securities under a dividend plan, dividend reinvestment plan, employee purchase plan or another similar plan.

Division 2: Making a Bid

Duty to make bid to all security holders

2.8 An offeror must make a take-over bid or an issuer bid to all holders of the class of securities subject to the bid who are in the local jurisdiction by sending the bid to

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

Commencement of bid

2.9(1) An offeror must commence a take-over bid by

- (a) publishing an advertisement containing a brief summary of the take-over bid in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English, or
- (b) sending the bid to security holders described in section 2.8.

(2) An offeror must commence an issuer bid by sending the bid to security holders described in section 2.8.

Offeror's circular

2.10 (1) An offeror making a take-over bid or an issuer bid must prepare and send, either as part of the bid or together with the bid, a take-over bid circular or an issuer bid circular, as the case may be, in the following form:

- (a) Form 62-104F1 Take-Over Bid Circular, for a take-over bid; or
- (b) Form 62-104F2 Issuer Bid Circular, for an issuer bid.

(2) An offeror commencing a take-over bid under paragraph 2.9(1)(a) must,

- (a) on or before the date of first publication of the advertisement,

- (i) deliver the bid and the bid circular to the offeree issuer's principal office,
 - (ii) file the bid, the bid circular and the advertisement,
 - (iii) request from the offeree issuer a list of security holders described in section 2.8, and
- (b) not later than 2 business days after receipt of the list of security holders referred to in subparagraph (a)(iii), send the bid and the bid circular to those security holders.

(3) An offeror commencing a take-over bid under paragraph 2.9(1)(b) must file the bid and the bid circular and deliver them to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that.

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

Change in information

2.11(1) If, before the expiry of a take-over bid or an issuer bid or after the expiry of a bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in the bid circular or any notice of change or notice of variation that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid, the offeror must promptly

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

(2) Subsection (1) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

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

(4) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Variation of terms

2.12 (1) If there is a variation in the terms of a take-over bid or an issuer bid, including any extension of the period during which securities may be deposited under the bid, and whether or not that variation results from the exercise of any right contained in the bid, the offeror must promptly

- (a) issue and file a news release, and

- (b) send a notice of variation to every person to whom the bid was required to be sent under section 2.8 and whose securities were not taken up before the date of the variation.

(2) A notice of variation must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

(3) If there is a variation in the terms of a take-over bid or an issuer bid, the period during which securities may be deposited under the bid must not expire before 10 days after the date of the notice of variation.

(4) Subsections (1) and (3) do not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid resulting from the waiver where the consideration offered for the securities consists solely of cash, but in that case the offeror must promptly issue and file a news release announcing the waiver.

(5) A variation in the terms of a take-over bid or an issuer bid, other than a variation that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, must not be made after the expiry of the period, including any extension of the period, during which the securities may be deposited under the bid.

Filing and sending notice of change or notice of variation

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

Change or variation in advertised take-over bid

2.14 (1) If a change or variation occurs to a take-over bid that was commenced by means of an advertisement, and if the offeror has complied with paragraph 2.10(2)(a) but has not yet sent the bid and the bid circular under paragraph 2.10(2)(b), the offeror must

- (a) publish an advertisement that contains a brief summary of the change or variation in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English,
- (b) concurrently with the date of first publication of the advertisement,
 - (i) file the advertisement, and
 - (ii) file and deliver a notice of change or notice of variation to the offeree issuer's principal office, and
- (c) subsequently send the bid, the bid circular and the notice of change or notice of variation to the security holders of the offeree issuer before the expiration of the period set out in paragraph 2.10(2)(b).

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or notice of variation is not required to be filed and delivered under section 2.13.

Consent of expert – bid circular

2.15 (1) In this section and section 2.21, an expert includes a notary in Québec, solicitor, auditor, accountant, engineer, geologist or appraiser or any other person whose profession or business gives authority to a report, valuation, statement or opinion made by that person.

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

Delivery and date of bid documents

2.16 (1) A take-over bid, an issuer bid, a bid circular and every notice of change or notice of variation must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Except for a take-over bid commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

(3) If a take-over bid is commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation is deemed to have been dated as of the date of first publication of the relevant advertisement.

Division 3: Offeree Issuer's Obligations

Duty to prepare and send directors' circular

2.17 (1) If a take-over bid has been made, the board of directors of the offeree issuer must prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person to whom the bid was required to be sent under section 2.8.

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

- (a) must recommend to security holders that they accept or reject the bid and state the reasons for the recommendation,

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

(3) If paragraph (2)(c) applies, the board of directors must communicate to security holders a recommendation to accept or reject the bid or the decision that it is unable to make, or is not making, a recommendation, together with the reasons for the recommendation or decision, at least 7 days before the scheduled expiry of the period during which securities may be deposited under the bid.

(4) A directors' circular must be in the form of Form 62-104F3 Directors' Circular.

Notice of change

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

(2) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Filing directors' circular or notice of change

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

Individual director's or officer's circular

2.20 (1) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a separate director's or officer's circular to every person to whom the take-over bid was required to be sent under section 2.8.

(2) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a director's or officer's circular or any notice of change in relation

to it that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, other than a change that is not within the control of the director or officer, as the case may be, that director or officer must promptly send a notice of change to every person to whom the take-over bid was required to be sent under section 2.8.

(3) A director's or officer's circular must be in the form of Form 62-104F4 Director's or Officer's Circular.

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

(5) If a director or officer sends to the board of directors of the offeree issuer a circular under subsection (1) or a notice of change under subsection (2), the board, at the offeree issuer's expense, must promptly send a copy of the circular or notice to every person to whom the take-over bid was required to be sent under section 2.8.

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

(7) A notice of change in relation to a director's or officer's circular must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Consent of expert - directors' circular/individual director's or officer's circular

2.21 If a report, valuation, statement or opinion of an expert is included in or accompanies a directors' circular, an individual director's or officer's circular or any notice of change to either circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the circular or notice.

Delivery and date of offeree issuer's documents

2.22(1) A directors' circular, an individual director's or officer's circular and every notice of change must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

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

Division 4: Offeror's Obligations

Consideration

2.23(1) If a take-over bid or an issuer bid is made, all holders of the same class of securities must be offered identical consideration.

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

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

Prohibition against collateral agreements

2.24 If a person makes or intends to make a take-over bid or an issuer bid, the person or any person acting jointly or in concert with that person must not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.

Collateral agreements – exception

2.25(1) Section 2.24 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 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.

Proportionate take up and payment

2.26 (1) If a take-over bid or an issuer bid is made for less than all of the class of securities subject to the bid and a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) Subsection (1) does not prohibit an offeror from acquiring securities under the terms of an issuer bid that, if not acquired, would constitute less than a standard trading unit for the security holder.

(3) Subsection (1) does not apply to securities deposited under the terms of an 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.

(4) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction.

Financing arrangements

2.27 (1) If a take-over bid or an issuer bid provides that the consideration for the securities deposited under the bid is to be paid in cash or partly in cash, the offeror must make adequate arrangements before the bid to ensure that the required funds are available to make full payment for the securities that the offeror has offered to acquire.

(2) The financing arrangements required to be made under subsection (1) may be subject to conditions if, at the time the take-over bid or the issuer bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for the securities deposited under the bid due to a financing condition not being satisfied.

Division 5: Bid Mechanics

Minimum deposit period

2.28 An offeror must allow securities to be deposited under a take-over bid or an issuer bid for at least 35 days from the date of the bid.

Prohibition on take up

2.29 An offeror must not take up securities deposited under a take-over bid or an issuer bid until the expiration of 35 days from the date of the bid.

Withdrawal of securities

2.30 (1) A security holder may withdraw securities deposited under a take-over bid or an issuer bid

- (a) at any time before the securities have been taken up by the offeror,

- (b) at any time before the expiration of 10 days from the date of a notice of change under section 2.11 or a notice of variation under section 2.12, or
- (c) if the securities have not been paid for by the offeror within 3 business days after the securities have been taken up.

(2) The right of withdrawal under paragraph (1)(b) does not apply if

- (a) the securities have been taken up by the offeror before the date of the notice of change or notice of variation, or
- (b) one or both of the following circumstances occur:
 - (i) a variation in the terms of the bid consisting solely of an increase in consideration offered for the securities and an extension of the time for deposit to not later than 10 days after the date of the notice of variation;
 - (ii) a variation in the terms of the bid consisting solely of the waiver of one or more of the conditions of the bid where the consideration offered for the securities subject to the take-over bid or the issuer bid consists solely of cash.

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

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

Effect of market purchases

2.31 If an offeror purchases securities as permitted by subsection 2.2(3), those purchased securities must be counted in determining whether a condition as to the minimum number of securities to be deposited under a take-over bid has been fulfilled, but must not reduce the number of securities the offeror is bound to take up under the bid.

Obligation to take up and pay for deposited securities

2.32(1) If all the terms and conditions of a take-over bid or an issuer bid have been complied with or waived, the offeror must take up and pay for securities deposited under the bid not later than 10 days after the expiry of the bid or at the time required by subsection (2) or (3), whichever is earliest.

(2) An offeror must pay for any securities taken up under a take-over bid or an issuer bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) Securities deposited under a take-over bid or an issuer bid subsequent to the date on which the offeror first takes up securities deposited under the bid must be taken up and paid for by the offeror not later than 10 days after the deposit of the securities.

(4) An offeror may not extend its take-over bid or issuer bid if all the terms and conditions of the bid have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsections (3) and (4), if a take-over bid or an issuer bid is made for less than all of the class of securities subject to the bid, an offeror is only required to take up, by the times specified in those subsections, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26 at the expiry of the bid.

(6) Despite subsection (4), if the offeror waives any terms or conditions of a take-over bid or an issuer bid and extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

Return of deposited securities

2.33 If, following the expiry of a take-over bid or an issuer bid, an offeror knows that it will not take up securities deposited under the bid, the offeror must promptly issue and file a news release to that effect and return the securities to the security holders.

News release on expiry of bid

2.34 If all the terms and conditions of a take-over bid or an issuer bid have been complied with or waived, the offeror must issue and file a news release to that effect promptly after the expiry of the bid, and the news release must disclose

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

PART 3: GENERAL

Language of bid documents

3.1 (1) A person must file a document required under this Instrument in French or English.

(2) In Québec, a take-over bid circular, issuer bid circular, directors' circular, director's or officer's circular, notice of change or notice of variation required under Part 2 must be in French or in French and English.

(3) Subsection (1) does not apply to an exempt take-over bid made under section 4.4, or an exempt issuer bid made under section 4.10.

(4) Despite subsection (1), if a person files a document only in French or English, but delivers to a security holder a version of the document in the other language, the person must file that other version not later than when it is first delivered to the security holder.

Filing of documents

3.2(1) An offeror making a take-over bid under Part 2 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;
- (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 take-over bid under Part 2 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) The documents required to be filed

- (a) under subsection (1) must be filed on the day the take-over bid circular is filed under section 2.10, and
- (b) under subsection (2) must be filed on the day that the directors' circular is filed under section 2.19.

(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.

Certification of bid circulars

3.3(1) A bid circular or a notice of change or notice of variation in respect of the bid circular required under this Instrument must contain a certificate of the offeror in the required form signed

- (a) if the offeror is a person other than an individual, by each of the following:
 - (i) the chief executive officer or, in the case of a person that does not have a chief executive officer, the individual who performs similar functions to a chief executive officer,
 - (ii) the chief financial officer or, in the case of a person that does not have a chief financial officer, the individual who performs similar functions to a chief financial officer, and
 - (iii) 2 directors, other than the chief executive officer and the chief financial officer, who are duly authorized by the board of directors of that person to sign on behalf of the board of directors, or
- (b) if the offeror is an individual, by the individual.

(2) For the purposes of subsection (1)(a), if the offeror has fewer than 4 directors and officers, the certificate must be signed by all of the directors and officers.

(3) A directors' circular or a notice of change in respect of a directors' circular required under this Instrument must contain a certificate of the board of directors of the offeree issuer in the required form signed by 2 directors who are duly authorized by the board of directors of that person to sign on behalf of the board of directors.

(4) Every person that files and sends an individual director's or officer's circular or a notice of change in respect of an individual director's or officer's circular under this Instrument must ensure that the circular or notice contains a certificate in the required form and signed by or on behalf of the director or officer sending the circular or notice.

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

Obligation to provide security holder list

3.4(1) If a person makes or proposes to make a take-over bid under Part 2 for a class of securities of an issuer that is not otherwise required by law to provide a list of its security holders to the person, the issuer must provide a list of holders of that class of securities, and any known holder of an option or right to acquire securities of that class, to enable the person to carry out the bid in compliance with this Instrument.

(2) For the purposes of subsection (1), section 21 of the *Canada Business Corporations Act* applies with necessary modifications to the person making or proposing to make the take-over bid and to the issuer, except that the affidavit that accompanies the request for the list of security holders must state that the list will not be used except in connection with a bid made under Part 2 for securities of the issuer.

PART 4: EXEMPTIONS

Division 1: Exempt Take-Over Bids

Normal course purchase exemption

4.1 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the bid is for not more than 5% of the outstanding securities of a class of securities of the offeree issuer;
- (b) the aggregate number of securities acquired in reliance on this exemption by the offeror and any person acting jointly or in concert with the offeror within any period of 12 months, when aggregated with acquisitions otherwise made by the offeror and any person acting jointly or in concert with the offeror within the same 12-month period, other than under a bid that is subject to Part 2, does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period;
- (c) there is a published market for the class of securities that are the subject of the bid;

- (d) the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition, as determined in accordance with section 1.11, plus reasonable brokerage fees or commissions actually paid.

Private agreement exemption

4.2(1) A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) purchases are made from not more than 5 persons in the aggregate, including persons located outside the local jurisdiction;
- (b) the bid is not made generally to security holders of the class of securities that is the subject of the bid, so long as there are more than 5 security holders of the class;
- (c) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities, including brokerage fees or commissions, is not greater than 115% of the market price of the securities at the date of the bid as determined in accordance with section 1.11;
- (d) if there is no published market for the securities acquired, there is a reasonable basis for determining that the value of the consideration paid for any of the securities is not greater than 115% of the value of the securities.

(2) In subsection (1), if an offeror makes an offer to acquire securities from a person and the offeror knows or ought to know after reasonable enquiry that

- (a) the person acquired the securities in order that the offeror might make use of the exemption under subsection (1), then each person from whom those securities were acquired must be included in the determination of the number of persons to whom an offer to acquire has been made, or
- (b) the person from whom the acquisition is being made is acting as a nominee, agent, trustee, executor, administrator or other legal representative for one or more other persons having a direct beneficial interest in those securities, then each of those other persons must be included in the determination of the number of persons to whom an offer to acquire has been made.

(3) Despite paragraph (2)(b), a trust or estate is to be considered a single security holder in the determination of the number of persons to whom an offer to acquire has been made if

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

Non-reporting issuer exemption

4.3 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the offeree issuer is not a reporting issuer;
- (b) there is no published market for the securities that are the subject of the bid;
- (c) 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.

Foreign take-over bid exemption

4.4 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (b) the offeror reasonably believes that security holders in Canada beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (c) the published market on which the greatest volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada;
- (d) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (e) 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 the local jurisdiction;
- (f) if the bid materials referred to in paragraph (e) are not in English, a brief summary of the key terms of the bid prepared in English, and in Québec in French or French and English, is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction at the same time as the bid materials are filed and sent;

- (g) 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, and in Québec in French or French and English, in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction.

De minimis exemption

4.5 A take-over bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the number of beneficial owners of securities of the class subject to the bid in the local jurisdiction is fewer than 50;
- (b) the securities held by the beneficial owners referred to in paragraph (a) constitute, in aggregate, less than 2% of the outstanding securities of that class;
- (c) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (d) 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 the local jurisdiction.

Division 2: Exempt Issuer Bids

Issuer acquisition or redemption exemption

4.6 An issuer bid for a class of securities is exempt from Part 2 if any of the following conditions are satisfied:

- (a) the securities are purchased, redeemed or otherwise acquired in accordance with the terms and conditions attaching to the class of securities that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or the securities are acquired to meet sinking fund or purchase fund requirements;
- (b) the purchase, redemption or other acquisition is required by the terms and conditions attaching to the class of securities or by the statute under which the issuer was incorporated, organized or continued;
- (c) the terms and conditions attaching to the class of securities contain a right of the owner to require the issuer of the securities to redeem, repurchase, or otherwise

acquire the securities, and the securities are acquired under the exercise of the right.

Employee, executive officer, director and consultant exemption

4.7 An issuer bid is exempt from Part 2 if the securities are acquired from a current or former employee, executive officer, director or consultant of the issuer or of an affiliate of the issuer and, if there is a published market in respect of the securities,

- (a) the value of the consideration paid for any of the securities acquired is not greater than the market price of the securities at the date of the acquisition, determined in accordance with section 1.11, and
- (b) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the exemption provided by this paragraph does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period.

Normal course issuer bid exemptions

4.8(1) In this section, “**designated exchange**” means the Toronto Stock Exchange, the TSX Venture Exchange or other exchange recognized or designated by the securities regulatory authorities for the purpose of this Instrument.

(2) An issuer bid that is made in the normal course through the facilities of a designated exchange is exempt from Part 2 if the bid is made in accordance with the bylaws, rules, regulations and policies of that exchange.

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

- (a) the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer;
- (b) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired in reliance on this exemption by the issuer and any person acting jointly or in concert with the issuer within any 12-month period does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period;
- (c) the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with section 1.11, plus reasonable brokerage fees or commissions actually paid.

(4) An issuer making a bid under subsection (2) must promptly file any news release required to be issued by the designated exchange.

(5) An issuer making a bid under subsection (3) must issue and file, at least 5 days before the commencement of the bid, a news release containing 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.

Non-reporting issuer exemption

4.9 An issuer bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) the issuer is not a reporting issuer;
- (b) there is no published market for the securities that are the subject of the bid;
- (c) 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 issuer or an affiliate of the issuer, or
 - (ii) were formerly in the employment of the issuer or in the employment of an entity that was an affiliate of the issuer at the time of that employment, and who while in that employment were, and have continued after the employment to be, security holders of the issuer.

Foreign issuer bid exemption

4.10 An issuer bid is exempt from Part 2 if all of the following conditions are satisfied:

- (a) security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (b) the offeror reasonably believes that security holders in Canada beneficially own less than 10% of the outstanding securities of the class subject to the bid at the commencement of the bid;
- (c) the published market on which the greatest volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada;

- (d) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (e) 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 the local jurisdiction;
- (f) if the bid materials referred to in paragraph (e) are not in English, a brief summary of the key terms of the bid prepared in English, and in Québec in French or French and English, is filed and sent to security holders whose last address as shown on the books of the offeree issuer is in the local jurisdiction at the same time as the bid materials are filed and sent;
- (g) 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, and in Québec in French or French and English, in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction.

De minimis exemption

4.11 An issuer bid is exempt from the requirements of Part 2 if all of the following conditions are satisfied:

- (a) the number of beneficial owners of the class of securities subject to the bid in the local jurisdiction is fewer than 50;
- (b) the securities held by the beneficial owners referred to in paragraph (a) constitute, in aggregate, less than 2% of the outstanding securities of that class;
- (c) security holders in the local jurisdiction are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class;
- (d) 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 the local jurisdiction.

PART 5: REPORTS AND ANNOUNCEMENTS OF ACQUISITIONS

Definitions

5.1 In this Part,

- (a) **“acquiror”** means a person who acquires a security, other than by way of a take-over bid or an issuer bid made in compliance with Part 2, and
- (b) **“acquiror’s securities”** means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an acquiror or any person acting jointly or in concert with the acquiror.

Early warning

5.2(1) Every acquiror who acquires beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer or securities convertible into voting or equity securities of any class of a reporting issuer that, together with the acquiror’s securities of that class, would constitute 10% or more of the outstanding securities of that class, must

- (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*.

(2) An acquiror must issue an additional news release and file a report in accordance with subsection (1) each time any of the following events occur:

- (a) the acquiror or any person acting jointly or in concert with the acquiror acquires beneficial ownership of, or control or direction over,
 - (i) an additional 2% or more of the outstanding securities of the class of securities that was the subject of the most recent report required to be filed by the acquiror under this section, or
 - (ii) securities convertible into an additional 2% or more of the outstanding securities referred to in subparagraph (i);
- (b) there is a change in a material fact contained in the report required under subsection (1) or paragraph (a) of this subsection.

(3) During the period beginning on the occurrence of an event in respect of which a report or further report is required to be filed under this section and ending on the expiry of one business day after the date that the report or further report is filed, the acquiror required to file the report or any person acting jointly or in concert with the acquiror must not acquire or offer to acquire

beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

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

Acquisitions during bid

5.3(1) If, after a take-over bid or an issuer bid has been made under Part 2 for voting or equity securities of a reporting issuer and before the expiry of the bid, an acquiror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the acquiror's securities of that class, constitute 5% or more of the outstanding securities of that class, the acquiror must, before the opening of trading on the next business day, issue and file a news release containing the information required by subsection (3).

(2) An acquiror must issue and file an additional news release in accordance with subsection (3) before the opening of trading on the next business day each time the acquirer, or any person acting jointly or in concert with the acquiror, acquires beneficial ownership of, or control or direction over, in aggregate, an additional 2% or more of the outstanding securities of the class of securities that was the subject of the most recent news release required to be filed by the acquiror under this section.

(3) A news release or further news release required under subsection (1) or (2) must set out

- (a) the name of the acquiror,
- (b) the number of securities of the offeree issuer that were beneficially acquired, or over which control or direction was acquired, in the transaction that gave rise to the requirement under subsection (1) or (2) to issue the news release,
- (c) the number of securities and the percentage of outstanding securities of the offeree issuer that the acquiror and all persons acting jointly or in concert with the acquiror, have beneficial ownership of, or control or direction over, immediately after the acquisition described in paragraph (b),
- (d) the number of securities of the offeree issuer that were beneficially acquired, or over which control or direction was acquired, by the acquiror and all persons 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 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 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.

Duplicate news release not required

5.4 If the facts in respect of which a news release is required to be filed under sections 5.2 and 5.3 are identical, a news release is required only under the provision requiring the earlier news release.

Copies of news release and report

5.5 An acquiror that files a news release or report under sections 5.2 or 5.3 must promptly send a copy of each filing to the reporting issuer.

PART 6: EXEMPTIONS**Exemption – general**

6.1 The regulator or the securities regulatory authority may, under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction, grant an exemption to this Instrument.

Exemption – collateral benefit

6.2 The regulator or the securities regulatory authority may decide for the purposes of section 2.24 that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to a selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into despite that section.

PART 7: TRANSITION AND COMING INTO FORCE**Transition**

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

Coming into force

7.2 This Instrument comes into force on February 1, 2008.

FORM 62-104F1

TAKE-OVER BID CIRCULAR

Part 1 General Provisions

(a) Defined terms

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

(b) Incorporating information by reference

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

(c) Plain language

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

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

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

(d) Numbering and headings

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

Part 2 Contents of Take-Over Bid Circular**Item 1. Name and description of offeror**

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

Item 2. Name of offeree issuer

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

Item 3. Securities subject to the bid

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

Item 4. Time period

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

Item 5. Consideration

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

Item 6. Ownership of securities of offeree issuer

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

- (a) by the offeror,
- (b) by each director and officer of the offeror, and
- (c) if known after reasonable enquiry, by
 - (i) each associate or affiliate of an insider of the offeror,

- (ii) an insider of the offeror, other than a director or officer of the offeror, and
- (iii) any person acting jointly or in concert with the offeror.

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

Item 7. Trading in securities of offeree issuer

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

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

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

Item 8. Commitments to acquire securities of offeree issuer

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

Item 9. Terms and conditions of the bid

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

Item 10. Payment for deposited securities

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

Item 11. Right to withdraw deposited securities

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

Item 12. Source of funds

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

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

Item 13. Trading in securities to be acquired

Provide a summary showing

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

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

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

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

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

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

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

Item 16. Arrangements with or relating to the offeree issuer

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

Item 17. Purpose of the bid

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

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

Item 18. Valuation

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

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

(1) If a take-over bid provides that the consideration for the securities of the offeree issuer is to be, in whole or in part, securities of the offeror or other issuer, include the financial statements

and other information required in a prospectus of the issuer whose securities are being offered in exchange for the securities of the offeree issuer.

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

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

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

Item 20. Right of appraisal and acquisition

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

Item 21. Market purchases of securities

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

Item 22. Approval of take-over bid circular

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

Item 23. Other material facts

Describe

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

Item 24. Solicitations

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

Item 25. Statement of rights

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

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

Item 26. Certificate

A take-over bid circular certificate form must state:

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

Item 27. Date of take-over bid circular

Specify the date of the take-over bid circular.

FORM 62-104F2

ISSUER BID CIRCULAR

Part 1 General Provisions

(a) Defined terms

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

(b) Incorporating information by reference

If you are qualified to file a short form prospectus under sections 2.2 to 2.7 of National Instrument 44-101 *Short Form Prospectus Distributions*, or by reason of an exemption granted by a securities regulatory authority, you may incorporate information required under item 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.

(c) 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.

(d) Numbering and headings

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

Part 2 Contents of 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 2.26(3) of the Instrument 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 2.26 (2) and (3) of the Instrument 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 issuer, other than a director or officer of the issuer, and
 - (iv) each person 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 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 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 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 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 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 2.24 of the Instrument, 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 2.25(1)(b)(ii) of the Instrument, 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 2.25(1)(b)(ii)(A) or (B) of the Instrument.

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 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 62-104F3

DIRECTORS' CIRCULAR

Part 1 General Provisions

(a) Defined terms

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

(b) 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.

(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 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 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 named in item 4 who has accepted or intends to accept the offer and the number of securities in respect of which such person 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 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 2.24 of the Instrument, or

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

(2) If the offeror is relying on an exception to the prohibition against collateral agreements under subparagraph 2.25(1)(b)(ii) of the Instrument, and if 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 2.25(1)(b)(ii)(A) or (B) of the Instrument.

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 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 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 62-104F4

DIRECTOR'S OR OFFICER'S CIRCULAR

Part 1 General Provisions

(a) Defined terms

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

(b) 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.

(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 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 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 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 62-104F5

NOTICE OF CHANGE OR NOTICE OF VARIATION

Part 1 General Provisions

(a) Defined terms

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

(b) 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.

(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 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 2.11 of the Instrument 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 2.11,
 - (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 2.12 of the Instrument 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 2.18 or subsection 2.20(2) of the Instrument 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 2.18,
 - (c) the director's or officer's circular, or

- (d) any notice of change previously delivered under subsection 2.20(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.