The Ontario Securities Commission

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1.1 Notices

1.1.1 The Investment Funds Practitioner – April 2015

OSC

THE INVESTMENT FUNDS PRACTITIONER

From the Investment Funds and Structured Products Branch, Ontario Securities Commission

What is the Investment Funds Practitioner?

The Practitioner is an overview of recent issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that investment funds file with the OSC. It is intended to assist investment fund managers and their staff or advisors who regularly prepare public disclosure documents and applications for exemptive relief on behalf of investment funds.

The Practitioner is also intended to make you more broadly aware of some of the issues we have raised in connection with our reviews of documents filed with us and how we have resolved them. We hope that fund managers and their advisors will find this information useful and that the Practitioner can serve as a useful resource when preparing applications and disclosure documents.

The information contained in the Practitioner is based on particular factual circumstances. Outcomes may differ as facts change or as regulatory approaches evolve. We will continue to assess each case on its own merits.

The Practitioner has been prepared by staff of the Investment Funds and Structured Products Branch and the views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

Request for Feedback

This is the 14th edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under *Investment Funds & Structured Products*. We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to investmentfunds@osc.gov.on.ca.

Prospectuses

Dual Class Structures of Flow-Through Limited Partnerships

We have recently observed changes in the structures of flow-through limited partnerships in prospectus filings. Typically, we see flow-through limited partnerships file prospectuses to qualify one class of units that is referable to one portfolio of assets.

In recent prospectus filings for flow-through limited partnerships, we observed that some limited partnerships propose to issue two classes of units under one prospectus, with each class comprising a separate non-redeemable investment fund with its own separate portfolio of assets. However, the minimum offering amount that must be reached may consist of any combination of units of the two funds. Among other issues, staff questioned why two separate investment funds could rely on the other for reaching their minimum offering amount. In response to staff's concerns, the filers revised the offering to ensure that each fund qualified in the prospectus had to reach its own minimum offering amount. Staff also asked that each of the two investment funds qualified by the same prospectus provide disclosure in response to the items in Form 41-101F2 *Information Required in an Investment Fund Prospectus* unless the responses are identical for both classes. In response, the filers revised their prospectuses, for instance, by disclosing the maximum leverage ratio for each fund, rather than the maximum leverage ratio for the limited partnership as a whole, and by disclosing the estimated offering expenses for each fund, rather than offering expenses for the limited partnership as a whole.

We continue to review and monitor developments on dual class structures for flow-through limited partnerships and will provide further guidance as needed. Issuers and their counsel are encouraged to contact staff in the planning stage of any structure that may give rise to questions concerning this issue.

Redemption Price of Securities – Exchange-Traded Funds

As noted in the November 2014 edition of the *Investment Funds Practitioner*, subsection 10.3(4) of National Instrument 81-102 *Investment Funds* (NI 81-102) explicitly prohibits redemptions of securities of non-redeemable investment funds at a price higher than the net asset value (NAV) per security, to prevent dilution of the value of the fund's remaining securities. In staff's view, subsection 10.3(3) of NI 81-102 should be interpreted to impose the requirement that the redemption price not exceed NAV per security on exchange-traded mutual funds (ETFs). The same public policy concern regarding dilution exists for ETFs as for non-redeemable investment funds.

Staff have recently reviewed prospectuses of ETFs that offer periodic redemptions of their securities at a price determined with reference to the closing market price of those securities (Market Price Redemptions). However, where Market Price Redemptions are offered, if the securities of the ETF trade at a premium to the NAV per security, the redemption price may dilute the value of the remaining outstanding securities of the ETF. To prevent dilution, staff expect the redemption price for Market Price Redemptions to be capped at NAV.

To ensure that the concerns with respect to dilution are addressed, in recent prospectus reviews for ETFs with Market Price Redemptions, staff have asked that the disclosure regarding Market Price Redemptions include a statement that the amount payable per security redeemed will not exceed the NAV per security of the ETF.

Default Mutual Fund Distributions

In the course of our prospectus reviews, we are placing a greater emphasis on the various practices that currently exist for mutual funds regarding distributions paid in the form of reinvested units or shares instead of cash. More specifically, we are focused on funds that are designed to pay regular distributions. Of particular concern are those mutual funds that set the payment of distributions in the form of reinvested units or shares as the default option, if securityholders do not specifically request distributions in cash.

Staff's view is that where a choice to receive distributions in cash or in reinvested units or shares is available, a fund manager should ensure that a securityholder has, in fact, made that election, rather than proceeding with a default option in the absence of instructions. This is particularly so where that default option could result in additional fees being paid by a securityholder. For example, if a fund is purchased under a deferred sales charge (DSC), fees may be payable on redemption of those reinvested units, whereas no fees would apply to cash distributions.

Staff's emphasis is part of a larger focus on the use of default options, in the absence of receiving instructions from securityholders. We are concerned that these default options could interfere with the client/advisor relationship since they permit transactions to proceed whether or not a securityholder discusses and understands their options with their advisor.

We expect to continue to review distribution policies generally, with a particular emphasis on funds that seek to make regular distributions. We will continue to examine default options and the differing treatment of reinvested distributions versus cash with respect to redemption fees payable in a DSC series. Staff will provide further guidance as needed.

Issuers and their counsel are encouraged to contact staff in the planning stage of any structure that may give rise to questions concerning this issue.

Offering Expenses of Split Share Companies

Staff have begun to request additional prospectus disclosure of the offering expenses of split share companies. Typically, split share companies issue two classes of shares, namely, preferred shares and capital shares, with preferred shares ranking in priority to the capital shares with respect to repayment of capital. This structure results in offering expenses effectively being borne by the capital shareholders, with the capital class' net asset value reduced by the total offering expenses, as long as the net asset value per unit (comprised of both the capital share and the preferred share) is greater than the redemption amount of the preferred share.

Staff will continue to request enhanced disclosure on the cover page and in the *Fees and Expenses* tables within the prospectus summary and the body of the prospectus, specifying that the expenses of the offering, of both the preferred shares and capital shares, are effectively borne by the capital shareholders.[1]

[1] For an example of such disclosure, see *Brompton Oil Split Corp.* dated January 29, 2015.

Recent Amendments to NI 81-102 – Closed-End Funds

Since the coming into force of the recent amendments to NI 81-102 introducing core investment restrictions and fundamental operational requirements for non-redeemable investment funds, staff have noticed the continued inclusion of disclosure in closed-end fund prospectuses that suggest that the closed-end fund would be permitted to do certain activities that are now contrary to the amended NI 81-102.

The first type of disclosure relates to the suspension of redemptions. This disclosure generally states that the fund may suspend the redemption of securities for any period not exceeding a specified number of days during which the fund manager determines that conditions exist which render impractical the sale of the fund's assets or which impair the ability of the fund manager to determine the value of the fund's assets. However, section 10.6 of NI 81-102 now only provides for two situations during which a closed-end fund may suspend redemptions, neither of which represents the situation described in the prospectus. As such, this type of disclosure would contravene section 10.6 of NI 81-102.

Staff's view is that this disclosure should either be fully removed or be revised to only state that, aside from the situations described in section 10.6 of NI 81-102, the fund may suspend the redemption of securities only with regulatory approval.

The second and third types of disclosure that staff have seen both relate to the list of matters that can only be undertaken with securityholder approval. For example, that securityholder approval is required for issuances of additional securities at more than NAV, inferring that securityholder approval would not be required for issuances of additional securities at less than NAV. However, subsection 9.3(2) of NI 81-102 now prohibits dilutive offerings at less than NAV for closed-end funds. Similarly, we've seen disclosure that says that securityholder approval would be required for rights or warrants offerings. However, section 9.1.1 of NI 81-102 now prohibits warrants or rights offerings. Staff's view is that both of these types of disclosure should be removed from closed-end fund prospectuses.

Closed-end fund issuers and their counsel are reminded to consider the recent amendments to NI 81-102 before filing their prospectus to ensure the disclosure reflects regulatory changes.

Fund Facts

Past Performance Presentation in Fund Facts

Under the "How has this fund performed?" section of the Fund Facts, mutual funds are required to provide disclosure of past performance. The form requires inclusion of a year-by-year return chart, a best and worst 3-month return chart, and the average annual return for the mutual fund. In the course of our prospectus reviews, we have noticed that there are certain scenarios that are not contemplated by the form requirements, which could lead to inconsistent or unclear disclosure.

The Fund Facts is required to be prepared for each class or series of a mutual fund. Occasionally, we encounter situations where certain classes or series of a fund have had periods during which no shares or units were outstanding. In such circumstances, it may not be possible to show performance for a complete calendar year, or to calculate an average annual return since there will be gap periods during which the class or series would not have had any assets (asset gaps).

In order to maximize the utility of the Fund Facts for investors, staff have been asking fund managers to consider alternative approaches to the presentation of past performance. For example, in situations where a class or series of a mutual fund experiences periods where there are asset gaps, some fund managers have used the performance record of another class or series of the mutual fund as a "proxy" for the missing performance information. In selecting the proxy class or series, the fund manager should ensure that the fees are not lower than those of the class or series with the asset gap. In addition, the proxy class or series should not have any special features that would cause a material difference in performance (e.g., currency hedging).

Where a fund manager does adopt an alternative approach to deal with any asset gap issues, staff would expect the Fund Facts to include a notation indicating that the performance of a proxy class or series has been presented.

Public Inquiries

Rehypothecation of Collateral for OTC Derivatives

We recently received an inquiry concerning over-the-counter (OTC) derivatives. At issue was whether portfolio assets deposited by an investment fund with a counterparty as collateral in connection with a specified derivatives transaction pursuant to subsection 6.8(3) of NI 81-102, may be rehypothecated (i.e., pledged, sold or otherwise encumbered) by the counterparty.

Staff concluded that rehypothecation of collateral deposited by an investment fund with a counterparty is generally not permitted under NI 81-102.

Staff's view is that subsection 6.8(3) of NI 81-102, which permits an investment fund to deposit its portfolio assets as collateral with a counterparty in connection with a particular specified derivatives transaction, is a carve-out from the requirement in subsection 6.1(1) of NI 81-102 that all of a fund's portfolio assets be held by the custodian. This carve-out permits assets of the investment fund to be deposited with an entity other than the custodian (i.e., the counterparty) in limited circumstances, for the sole purpose of effecting a specified derivatives transaction. In this context, staff's view is that the counterparty stands in the place of the custodian to safeguard the portfolio assets deposited with it. Given that all or substantially all of a fund's assets may be deposited with a counterparty under subsection 6.8(3) of NI 81-102, if the counterparty were to rehypothecate the portfolio assets, the investment fund would be subject to risks inconsistent with the core restrictions in NI 81-102.

We also note that the reference in subsection 6.8(3) of NI 81-102 is to a *"…deposit in connection with a particular specified derivatives transaction"*. Our view is that this language limits the carve-out to the sole purpose of entering into the particular specified derivative contract. Staff are aware that permitting rehypothecation of collateral could reduce the cost of the derivative transaction to the fund, however, subsection 6.8(3) of NI 81-102 does not contemplate this purpose.

Given this interpretation, we remind fund managers of their responsibility to ensure that any agreement documenting the OTC derivatives transaction (such as the ISDA or other agreement) prohibits the counterparty from using the collateral for any purpose other than the purpose for which it was originally pledged to the counterparty, namely, the completion of the *"particular specified derivatives transaction"*. Further, our view is that a fund manager must ensure that any documentation evidencing the terms of a specified derivatives transaction: (i) adequately protects the investment fund's portfolio assets from counterparty credit risk, (ii) limits the purpose for which collateral has been deposited by the investment fund to that of the completion of the derivatives transaction consistent with NI 81-102, and (iii) limits the ability of the counterparty to deal with portfolio assets deposited by the investment fund as collateral, in a manner that is consistent with the ability of the fund's custodian to deal with the fund's assets under custody.

We encourage fund managers to be mindful of these considerations when establishing OTC derivative arrangements for the investment funds they manage.

1.1.2 OSC Notice 11-771 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2016

ONTARIO SECURITIES COMMISSION NOTICE 11-771 – STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS REGARDING STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2016

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin each year a statement of the Chairman setting out the proposed priorities of the Commission for its current fiscal year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

This Statement of Priorities is a subset of our overall OSC Business Plan which is aligned with our OSC Strategic Plan. The document sets out the priority actions that the OSC will take in 2015-2016 to address each of the goals and its related priorities. While the proposed priorities will potentially impact more than one organizational goal, each priority is identified only under the specific goal where the greatest impact is expected. In certain cases, the process required to properly assess the issues, including consultations with market participants, and to develop and implement appropriate regulatory solutions, may take more than one year to complete.

In an effort to obtain feedback and specific advice on our proposed priorities, the Commission is publishing a draft Statement of Priorities which follows this Request for Comments. The Commission will consider the feedback, and make any necessary revisions prior to finalizing and publishing its 2015–2016 Statement of Priorities. Shortly after the conclusion of our 2014-2015 fiscal year the OSC will publish a report on its progress against its 2014-2015 priorities on our website.

Comments

Interested parties are invited to make written submissions by June 1, 2015 to:

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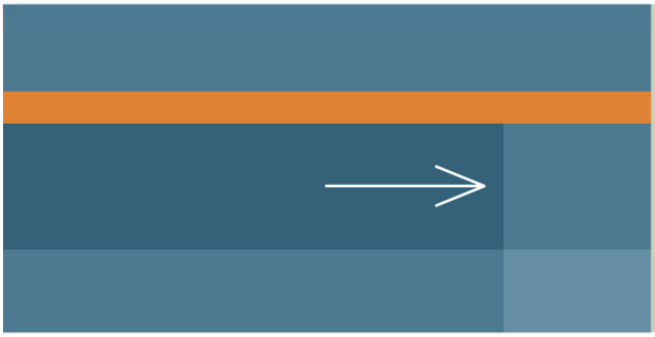
April 2, 2015

[Editor's Note: *2015-2016 OSC Draft Statement of Priorities – Request for Comments* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Draft Statement.]

OSC ONTARIO SECURITIES COMMISSION



2015-2016
Draft OSC Statement of Priorities
Request for Comments

Introduction

We are pleased to present the OSC Chair's proposed Statement of Priorities (SoP) for the Commission for the year commencing April 1, 2015. The *Securities Act* (Ontario) requires the Ontario Securities Commission (OSC) to publish the SoP in its Bulletin and to deliver it to the Minister by June 30 of each year. This SoP also supports the OSC's commitment to delivering its regulatory services effectively and with accountability.

This SoP sets out the OSC's strategic goals and the specific initiatives that the OSC will pursue in support of each of these goals in 2015-2016. The SoP also describes the environmental factors that the OSC has considered in setting these goals.

OSC Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

OSC Mandate

The OSC's mandate (established by statute) is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

Our Environment -- Challenges and Issues

Capital market structures and products continue to evolve at a rapid pace. The regulatory framework for Ontario's capital markets is designed to provide protection to investors while fostering fair and efficient capital markets. A wide range of issues and risks challenges the OSC's ability to achieve its vision and mandate. Public confidence in these markets can be affected by many factors, including the stability of the financial system, the economic health of the country and the volatility in the marketplace. Key challenges and issues that may influence our policy agenda and affect our operations and how we use our resources are set out below.

Globalization continues to have wide-ranging impacts on our capital markets. Extreme mobility of capital heightens the need for the OSC to support the competitiveness of Ontario capital markets and the importance of regulatory alignment both domestically and around the world. It creates a strong need for engagement and appropriate coordination with foreign regulators to achieve effective cross-jurisdiction enforcement or mutual reliance in other areas that can deliver better regulatory outcomes. The OSC must also remain focused on seeking proportionate regulatory solutions and opportunities to avoid or reduce undue burdens on business as regulatory burden is a key component affecting the competitiveness and efficiency of Ontario's capital markets. Over- or under-regulation may deter innovation, capital raising, and productive and appropriate risk taking.

Harmonization and Coordination need to be key focus areas for the OSC given the international, national and interprovincial nature of the markets it regulates and because capital flows are not constrained by borders. The OSC also works with the Canadian Securities Administrators (CSA) to harmonize rules and their application across the country where practicable. The OSC continues to play an active role in international organizations such as the

International Organization of Securities Commissions (IOSCO) to influence and promote changes to international securities regulation to benefit Ontario markets and participants.

The OSC is working with the Ontario Government and other participating jurisdictions to implement a cooperative capital markets regulatory regime to deliver more efficient and effective regulation of the capital markets. The OSC must balance the need to maintain an engaged and effective OSC regulatory presence while contributing to a smooth transition to a Capital Markets Regulatory Authority (CMRA) that addresses the needs of investors and market participants.

Ongoing Structural Changes in our Financial System will continue to introduce a range of challenges. Evolving business models, growth in exempt market activities (including crowdfunding) and the expanding use of social media and mobile technology will continue to pose regulatory challenges.

Financial markets are increasingly dispersed and complex and the complexity of financial products, markets and technology continues to evolve at a rapid pace. For example, growth in clearing through derivatives clearing organizations and new requirements for uncleared swaps and monitoring have implications in terms of market concentration and investor choice. The transparency, fairness and liquidity of fixed income markets can also affect the cost of capital and investor alternatives. Investors also must deal with complexities and variations in the design of investment funds, retail products and hybrid securities.

Digital evolution continues to disrupt and transform the capital markets landscape. This evolution can be seen in a wide range of examples that challenge the OSC's ability to maintain an effective and efficient regulatory framework to support rapidly evolving market structures and processes. Evolving market channels (e.g. automated financial advice) could redefine client wealth management expectations as well as the fees charged for advice. Increased dependence on digital connectivity, combined with exponential growth in data, creates challenges with data management and raises potential exposure to resilience issues and disruptions, including cyber security issues.

Demographics, including a growing seniors' population, will continue to generate a range of investor-focused issues. Expectations that the OSC will support and protect investors continue to grow and are reinforced by increasingly active investor advocacy groups. The OSC will need to continue to reach out and connect with investors and understand their needs, to advance investor interests and to educate investors about market changes.

Reliance on advice is expected to continue to grow to meet changing investor risk profiles and more complex investment choices and structural shifts, such as the continuing shift from defined benefit to defined contribution pension plans. In addition, new Exempt Market offerings are expected to attract many new investors to the capital markets who are inexperienced and would benefit from the advice of investment professionals. As a result, issues related to market conduct, firms' compliance cultures and how advisors meet the interests of their clients will continue to remain important areas of focus. Investors are seeking an environment where reliance on their advisors is well-placed, the advice being provided is

suitable, and any conflicts are managed appropriately. Through achievement of these outcomes, the OSC will foster investors' confidence to invest in our capital markets.

A well-functioning investor/advisor relationship is critical to the economic well-being of Ontarians and ultimately to achieving healthy capital markets. The Ontario Government is currently examining policy alternatives for more tailored regulation of financial planning, including analysis of relevant issues (e.g. sufficiency of regulatory frameworks, proficiency and education requirements and the use of multiple titles). Better alignment of the interests of firms and investors can be achieved by improving standards of financial advice, raising competency and increasing transparency regarding financial advice.

Human capital continues to be an area of strategic focus for the OSC. The OSC operates in a competitive environment where attracting, motivating and retaining top talent is a key challenge. It will be critically important for the OSC to invest in data and information systems and continue to provide the right tools and training to leverage the talents of its people.

Increasing regulatory burden affects the competiveness and efficiency of Ontario's capital markets. Regulatory burden continues to present challenges for market participants as the complexity of regulatory requirements and the resources required to comply continue to grow. The OSC will need to examine whether the existing rules remain effective, and determine whether they inhibit or promote high-quality capital markets and deliver a system that protects investors and promotes their confidence. The OSC must balance the costs of complying with the regulatory protections that safeguard investor needs with the concern that these costs may induce market participants to access non-traditional, less regulated markets for capital.

OSC 2015 - 2016 Regulatory Goals

1. Deliver strong investor protection - *The OSC will champion investor protection, especially for retail investors*

2. Deliver responsive regulation - *The OSC will identify important issues and deal with them in a timely way*

3. Deliver effective compliance, supervision and enforcement - *The OSC will deliver effective compliance oversight and pursue fair, vigorous and timely enforcement*

4. Promote financial stability through effective oversight **-** *The OSC will implement a regulatory program to effectively oversee and supervise the OTC derivatives market infrastructure to reduce systemic risk*

5. Be an innovative, accountable and efficient organization - *The OSC will be an innovative and efficient organization through excellence in the execution of its operations, and will demonstrate accountability in fulfilling its mandate and achieving its goals*

The OSC has accomplished much in moving its regulatory agenda forward and has made a number of key advances in the way it approaches its work. The OSC has made important advances in providing guidance to market participants and investors and in using open and consultative processes to assess and address issues. The OSC has significantly grown the level of its cooperation with many entities, including Federal Finance, the Office of the Superintendent of Financial Institutions and the Heads of Agencies, in order to achieve more harmonized and coordinated outcomes. The amount of enforcement activity conducted with police and other enforcement bodies continues to expand, resulting in more successes across a broader range of enforcement actions. The impact of the OSC's efforts internationally is growing, resulting in timely insight, understanding and input into emerging regulatory issues.

Confidence in fair and efficient markets is a prerequisite for economic growth. The OSC is the largest regulator in the largest market in Canada. Our actions have implications for Ontario, for the rest of Canada and, given the global nature of capital markets, internationally. The OSC remains committed to promoting safe, trustworthy and efficient markets in Ontario and has identified a broad range of initiatives to improve the regulatory framework in Ontario. Although the OSC SoP is focused on our plan for 2015-2016, in some cases these initiatives are ongoing from prior years and/or will not be completed within 2015-2016. Initiatives often span more than one year for various reasons including:

- The nature and complexity of most issues warrant careful analysis and review of potential options and implications
- Consultation contributes to better outcomes; however, consultation takes time. This is particularly true in achieving national consensus with other regulators on harmonized approaches
- Regulatory choices can have fundamental and profound impacts on industry. The cost of being wrong can be very significant and the impacts on industry are usually difficult, if not impossible, to reverse

In some instances, specific priorities are not carried forward to the SoP in the following year. This does not necessarily mean that work on the initiative has stopped but rather that its priority relative to other initiatives no longer warrants inclusion in the SoP, the remaining work is minimal, or the next steps involve integrating the changes into the OSC's daily operations.

This document sets out the most important priority areas where the OSC intends to focus resources and actions in 2015-2016. It is important to note that the majority of OSC resources are focused on delivering the core regulatory work (authorizations, reviews, compliance and enforcement) undertaken by the OSC to maintain high standards of regulation in Ontario's capital markets. A smaller proportion of OSC resources are applied to our high profile work on SoP initiatives. Each of the proposed priorities has been aligned under one of the five OSC regulatory goals.

Goal 1 – Deliver strong investor protection

The OSC is strongly committed to delivering on its mandate to protect investors and is proposing a number of initiatives to enhance investor protection. Investors need to be confident in the market and products they invest in. A key step to achieving this outcome is to

improve the alignment of the interests of advisors and firms with those of investors. Know your client (KYC), know your product (KYP) and suitability are among the most fundamental obligations owed to a client. This is particularly important given the degree to which investors rely on advice.

Investors need to be confident that the advice they receive involving financial products and services is unbiased and of high quality. Investors need to better understand the cost of advice and be assured that compensation structures will not adversely affect the quality of advice they receive or their long term investment outcomes. At a more fundamental level it is important to achieve greater consistency in the level and type of disclosure across similar products. To maximize the value of improved disclosure the OSC also needs to proactively inform and educate investors so they are better prepared and able to invest.

Investor profiles are diverse and this raises complex challenges. Aging demographics raise a number of investor protection issues. Older Canadians are facing challenges to achieve sufficient investment returns either for their own retirement or for aging parents. New investors, in particular those attracted by new investment alternatives provided by Exempt Markets, may be inexperienced and require expert support and guidance. Other vulnerable investor groups can also be at risk as they strive to support education costs for children or to meet lifestyle consumption goals. As each of these groups searches for yield and/or capital appreciation, its members can become susceptible to fraud and other investment risks that can have life-changing outcomes. The wide disparity in the level of financial literacy and understanding among investor groups is a key source of risk that needs to be addressed through outreach, education and regulation.

Achieving consensus on harmonized approaches to improve investors' confidence and trust in our markets, and the advisors and firms they interact with, will take more than one year to achieve. The priorities set out below are designed to improve the alignment of the expectations of investors and the actions of their advisors and assist investors to more effectively meet the challenging environment they face.

Putting the Interests of Investors First

Priority Issue	Advance regulatory reforms that put the interests of investors first
Action Plan/ Next Steps	a. Develop and evaluate regulatory provisions to create a best interest duty b. Develop and evaluate targeted regulatory reforms under NI 31-103 to improve the advisor/client relationship c. Finalize analysis of advisor compensation practices and address those practices that are inconsistent with current regulatory requirements
Success Measures/ Expected Outcomes	a. Analysis of approaches for creating a best interest duty completed b. Proposals developed to amend NI 31-103 c. Staff Notice of compensation review findings including expectations for compliance and best practices

Reviewing Compensation Arrangements in Mutual Funds and Empowering Investors through Better Disclosure

Priority Issue	Determine what regulatory action is needed to address embedded commissions and other types of compensation arrangements and improve retail investment product disclosure
Action Plan/ Next Steps	a. Complete third-party research to determine how mutual fund compensation models may influence advisor behaviour b. Review and evaluate with the CSA the research results and publish the findings c. Support implementation of pre-sale delivery of Fund Facts for mutual funds and continue to work with the CSA to implement the Point of Sale initiative; specifically, publish rules for comment: i. to introduce a mandated CSA risk classification methodology to improve the comparability of risk ratings of mutual funds in the Fund Facts ii. to introduce a new summary disclosure document for ETFs (ETF Facts) and require it to be delivered
Success Measures/ Expected Outcomes	a. Third-party research completed and Staff Notice setting out key findings published b. Actionable results identified by the OSC including a recommendation made about embedded commissions and other types of compensation arrangements c. Rules to introduce a mandated CSA risk classification methodology and to introduce a new summary disclosure document for ETFs published for comment

Improve Education, Outreach and Advocacy for Investors

Priority Issue	Advance investor protection and support to retail investors by expanding the OSC's investor engagement, education and outreach
Action Plan/ Next Steps	a. Improve the OSC's investor focus by integrating the OSC Office of the Investor with the OSC Investor Education Fund to create the new Office of Investor Policy, Education and Outreach, to: i. establish and implement the OSC's investor education strategy ii. better inform investors about market events, product innovations and key OSC regulatory and supervisory activities by publishing alerts and bulletins and working with investor networks and organizations on education and outreach campaigns iii. refresh and expand outreach programs, such as OSC in the Community, with a focus on potentially vulnerable investors b. Obtain a better understanding of investor issues and needs through targeted research, seminars and roundtables c. Respond to the issues identified at the 2014/15 seniors roundtable by: i. completing targeted research to improve the OSC's understanding of seniors' financial needs and challenges ii. collaborating with SROs and investor and industry associations to identify ways to be more responsive to seniors
Success Measures/ Expected Outcomes	a. Existing partnerships strengthened and new external relationships created to inform and advance investor focused issues b. Specific recommendations from the seniors roundtable addressed c. Relationships with key senior stakeholder organizations and networks established and strengthened

Goal 2 – Deliver responsive regulation

To meet the OSC's mandate the bulk of its resources are focused on delivering our core regulatory functions. As a gatekeeper to the markets, the OSC vets potential participants to confirm that they are suitable to participate in our markets and interact with investors or to raise capital in our markets. Compliance and enforcement activities continue to play a central role in maintaining and enhancing trust in Ontario's capital markets. Effective registration and

compliance oversight regimes, combined with timely enforcement, help deter misconduct and non-compliance by registrants and market participants.

Within the context of today's capital markets, we continue to believe that a national securities regulator will enhance investor protection, foster efficient rulemaking and globally competitive markets in Canada, strengthen our capacity to identify and manage systemic risk and solidify Canada's international reputation for regulating its financial system. While working with the participating jurisdictions to transition smoothly to the CMRA it will be critical for the OSC to maintain high standards of regulation and to keep stakeholders informed and engaged throughout the transition period. The OSC will also need to work with the CSA to seek harmonized approaches to regulation as much as possible.

Our regulatory framework needs to remain current, responsive to the continuing evolution of market structures and products, and supportive of capital formation in Ontario. The OSC must carefully balance the desire to broaden investment alternatives and improve access to capital with the need to maintain appropriate investor protections. To support the implementation of a regulatory framework to expand exempt markets and achieve this balance, the OSC will implement effective oversight and supervision processes. The OSC will need to work effectively with IIROC to achieve outcomes that best respond to these issues.

Where regulatory solutions are not achieving desired outcomes the OSC will need to take action to make necessary changes to achieve appropriate outcomes. Where access and transparency of markets are not sufficient, the OSC will need to look for solutions to improve the fairness and integrity of those markets where the needs of investors and those seeking capital can be achieved with mutual benefit.

The OSC introduced disclosure requirements in 2014 to promote the transparency and representation of women on Boards and in executive and senior management positions at senior exchange-listed issuers. The OSC continues to strongly support this outcome and will seek to maintain momentum on this issue to achieve better corporate decision-making.

Women on Boards and in Executive and Senior Management Positions

Priority Issue	Continue efforts to promote transparency and representation of women on Boards and in executive and senior management positions for senior exchange-listed issuers
Action Plan	a. Receive and review issuer disclosures on representation of women on Boards and in executive and senior management positions b. Publish results of the disclosure review c. Hold consultation roundtable to discuss results
Success Measures/ Expected Outcomes	a. Disclosure review completed and results are published b. Continued improvement in the transparency of Board selection and composition for senior exchange-listed issuers

Improve Access to Capital

Priority Issue	Foster capital formation in Ontario while maintaining appropriate investor safeguards
Action Plan/ Next Steps	a. Develop and publish rules to implement the following: i. offering memorandum exemption from prospectus requirements ii. crowdfunding regime iii. modernized prospectus-exempt rights offering regime iv. new reporting requirements regarding exempt market distributions b. With the CSA, develop an enhanced and harmonized report of exempt distributions to facilitate better monitoring of new prospectus exemptions c. Conduct compliance and pre-registration reviews focussing on these new exemptions and EMD portal business models. Meet with SROs to ensure our approaches to oversight are consistent and opportunities for regulatory arbitrage are minimized
Success Measures/ Expected Outcomes	a. Rules, companion policy and guidance for the proposed new exemptions published for comment and delivered to the Minister for approval b. Significant areas of non-compliance identified are appropriately addressed by registrants. Reduction in non-compliance by registrants c. Improved ability to monitor exempt market activity more efficiently

Market Structure Evolution

Priority Issue	Respond to issues (market data fees, trading fees) arising from the implementation of the Order Protection Rule (OPR)
Action Plan/ Next Steps	a. OPR framework amended in response to comments received from publication in 2014/2015, including finalizing approaches for dealing with trading fees and market data fees
Success Measures/ Expected Outcomes	a. Final changes to update the OPR framework, including approaches for dealing with trading fees and market data fees, are published

Goal 3 – Deliver effective compliance, supervision and enforcement

Effective compliance and strong enforcement are the cornerstones of protecting investors and fostering confidence in capital markets. The importance of effective compliance and supervision continues to grow as domestic market structures, processes and products (expansion of exempt market, new markets) and international (IOSCO, PFMI) guidelines and responsibilities evolve. As part of its core work the OSC will continue to undertake targeted compliance reviews of high risk and new registrants, specifically, online advice and portal business models. We will also conduct targeted prospectus and continuous disclosure reviews of issuers, investment funds and structured products that respond to market developments and product innovations, and publish OSC staff guidance as warranted.

The OSC continues to seek innovative approaches to identify serious breaches of Ontario securities law. Effective enforcement in today's increasingly complex markets requires new tools, enhanced computer forensics and other technological support. The OSC recently announced its intention to pursue a whistleblower program to achieve more timely, actionable information to deter misconduct. Through this initiative the OSC hopes to minimize harm to investors and better preserve the integrity of Ontario capital markets.

The OSC needs to reduce its enforcement timelines, including more timely issuance of its orders, decisions and reasons. A key to achieving this outcome will be measures to improve access to the tribunal and make the hearing process more streamlined, accessible and efficient.

Enhance Compliance through Effective Inspections, Supervision and Oversight

Priority Issue	Protect investors and foster confidence in our markets by confirming compliance with our regulatory framework
Action Plan/ Next Steps	a. Develop and implement programs to effectively oversee an expanded exempt market in Ontario including a risk based supervision program for issuers and registrants and tailored pre-registration reviews and compliance examination programs b. Implement data analysis for systemic risk oversight and market conduct purposes including the development of analytical tools and the creation of snapshot descriptions of the Canadian OTC derivatives market
Success Measures/ Expected Outcomes	a. New supervision programs in place and initial results of programs and reports on exempt market activity developed and published b. Systems for oversight and to facilitate systemic analysis of the Ontario derivatives markets will be in place c. Compliance program for the trade reporting rule in place. Reviews of largest derivatives participants commenced

Earlier Identification of Fraud and Other Violations

Priority Issue	Deter misconduct by seeking more timely, actionable information that will allow the OSC to pursue impactful cases of misconduct and serious breaches of securities law
Action Plan/ Next Steps	a. Complete consultations on proposed OSC whistleblower program b. Respond to comments and publish OSC whistleblower policy, if appropriate
Success Measures/ Expected Outcomes	a. OSC whistleblower program launched, if appropriate

Enhance Enforcement and Adjudicative Processes

Priority Issue	Achieve better outcomes from OSC enforcement and adjudicative processes by introducing better tools, analytics and approaches
Action Plan/ Next Steps	a. Improve technological support to Enforcement staff, including the Joint Serious Offences Team, through enhanced computer forensics and the capacity to conduct e-discoveries and e-hearings
Success Measures/ Expected Outcomes	a. The OSC's e-hearing directive and applicable case management guidelines result in reduced case timelines

Timely, Fair and Efficient Adjudication

Priority Issue	The OSC will improve its case management and adjudicative processes through more transparent policies, practices and procedures and more timely issuance of its orders, decisions and reasons
Action Plan/ Next Steps	a. Continue the implementation of its Electronic Case Management System and Hearing system and use of technology to enhance accessibility for respondents and the public by holding electronic hearings b. Implement and monitor adherence to its internal guideline for the timely release of decisions within six months c. Adhere to newly adopted Case Management Practice Directive regarding a new Case Management Timeline for Enforcement Proceedings
Success Measures/	a. The Electronic Case Management and Hearing System will be implemented and monitoring of issues and enhancements to the newly designed system will be made as appropriate

Expected Outcomes	b. Improved access to the tribunal. The efficiency and timeliness of tribunal adjudicative hearing and deliberation processes will be improved. Decisions will be released within six months c. The Tribunal will monitor the implementation of its newly adopted Case Management Timeline for Enforcement proceedings, and address arising issues

Goal 4 – Promote financial stability through effective oversight

Capital markets have become increasingly interconnected by technology, business models and investment flows. The interconnectedness of markets creates the potential for systemic risk within the wider financial framework, and securities regulators have assumed an important role in maintaining its stability. Success in managing this complex area will have a significant impact on market confidence and ultimately the health of our capital markets. It is critical for the OSC to work with other financial market regulators to design and build a regulatory framework and operational programs to effectively oversee and supervise the OTC derivatives market and its participants.

There are approximately $500 billion in corporate bonds outstanding in Canada and almost $500 billion in corporate bonds traded in the Canadian secondary market in 2014. In Canada, corporate bond trading is subject to limited post-trade transparency for both regulators and investors. The OSC is taking steps to enhance regulation in the fixed income market and to identify opportunities where changes to regulatory approaches could improve market transparency and better protect investor interests.

Promote Financial Stability through Effective Oversight

Priority Issue	Advance OSC systemic risk oversight and analytic capabilities
Action Plan/ Next Steps	a. Develop rules for the clearing of OTC derivatives b. Develop a registrant regulation framework for derivatives market participants c. Implement rules and a compliance program for OTC derivatives trade reporting d. Implement rule/policy framework for clearing agencies to incorporate CPMI/IOSCO revised standards e. Develop recommendations to implement Principle 14 Segregation and Portability under the CPMI IOSCO Principles for Financial Market Infrastructures
Success Measures/ Expected Outcomes	a. Clearing and reporting rules for OTC derivatives that align with international standards and meet G20 commitments will be in place b. National Instrument for Registration of Derivatives Dealers published for comment c. Notice that outlines recommendations for implementation of segregation and portability (other than for OTC derivatives) published

Regulation of the Fixed Income Market

Priority Issue	Enhance regulation in the fixed income market by increasing transparency, improving market integrity and evaluating access
Action Plan	a. Publish a regulatory plan, working with IIROC, that addresses key issues identified in the fixed income review, including requirements to increase post trade transparency
Success Measures/ Expected Outcomes	a. Plan published and implementation of proposed changes underway b. Improved post-trade transparency allowing more informed decision-making among all market participants

Goal 5 - Be an innovative, accountable and efficient organization

Securities regulators are facing growing pressures to respond appropriately to market issues while avoiding over-regulation. The need for a cost-effective regulatory framework is critical as capital moves more quickly across multiple marketplaces that span jurisdictional borders. The OSC is strengthening its core functions, including compliance and enforcement, and adjusting how it works to develop the capacity to efficiently deliver the right regulation for investors, market participants and markets. The OSC needs to continue its efforts to upgrade procedures, practices and systems as part of a commitment to robust processes and high-quality execution, including:

- Implementing a consistent organizational approach for managing risks
- Increasing reliance on research and analytics in the way we work, including conducting regulatory impact analyses prior to initiating proposed policy projects
- Expanding the use of technology to gather and analyze data and other information, including information required for compliance and adjudicative matters

Management and staff will continue these efforts to reposition the organization as a more proactive and agile securities regulator that fosters the integrity of capital markets in Ontario.

Harmonization and coordination are key elements in achieving cost-effective regulation. Increasingly, the OSC must deal with regulatory matters that are international, not just provincial or national, in their scope, such as the oversight of emerging markets issuers and the regulation of OTC derivatives. More than ever before, the OSC regulates within the context of a global marketplace, which underlines the imperative of engaging with our international counterparts, especially through IOSCO, to deliver proactive regulation. The OSC needs to provide leadership to the multinational reform agenda on matters that promote the convergence of stronger international market conduct standards that benefit investors and market participants. Participation in international regulatory fora allows the OSC to obtain timely insight and understanding of emerging compliance and regulatory issues to develop an informed, proactive oversight approach.

Effectively Influence the International Regulatory Agenda

Priority Issue	Influence the international regulatory agenda to reflect the needs of Ontario's markets
Action Plan/ Next Steps	a. Enhance our ability to influence and shape the international standard setting process by seeking leadership roles within IOSCO (e.g., Chair committees and task forces) b. Perform greater proactive analyses of risks/issues identified by other jurisdictions globally by participating in bi-lateral meetings with key regulatory partners
Success Measures/ Expected Outcomes	a. Other regulators seek our views and advice in developing regulatory standards because of the value we bring b. Ontario's interests are reflected in international initiatives that relate to issues affecting our markets c. Canadian regulatory framework keeps pace with global regulatory developments. Harmonized regulatory approaches internationally and within the CSA, where applicable, reduce regulatory burden on our market participants

Proactive use of Data and Research

Priority Issue	Improve policy development and regulatory outcomes by increasing the integration of economic and quantitative analysis, including regulatory impact analyses, in the development of policies and rules
Action Plan/ Next Steps	a. Continue to develop data collection, management and assessment practices b. Demonstrate enhanced use of economic analysis, research and data analysis within the OSC including completing a regulatory impact analysis for proposed policy projects
Success Measures/ Expected Outcomes	a. Use of research reflected in OSC policy initiatives and OSC publications b. Completion of one major research project

2015 – 2016 Financial Outlook

OSC Revenues and Surplus

The OSC is forecasting 2015–2016 revenues to increase by 13.9% from 2014–2015 actual revenues. The forecast reflects fee rates set out in the OSC's fee rules (13-502 and 13-503), which become effective April 6, 2015. The key change to the new fee rules is the return to the previous method of calculating participation fees. Under the new rules, we will use the most recent financial year information, as opposed to a reference fiscal year. As a result, fees due to the OSC will become less predictable as the amount payable by market participants will increase or decrease based on actual changes in business conditions and performance. Under the new fee rules, the OSC expects to generate a surplus of $6.6 million in 2015 – 2016 to add to its expected 2014 - 2015 ending surplus of $11.2 million, for a total surplus of $17.8 million as at March 2016. When the new fee rules were developed and published, the OSC advised that they would be relatively revenue neutral over the three-year period, with an expected surplus in 2015-2016, a smaller surplus in 2016-2017 and a deficit in 2017-2018. This is because revenues are expected to be relatively flat over the term of the rule, while expenses are expected to increase each year. The budget approved by the OSC Board for 2015-2016 is in line with this expectation. As a result, the above-noted ending general surplus is expected to decline to $15.4 million by the end of 2017 – 2018.

2015 – 2016 Budget Approach

Our regulatory framework needs to remain current and responsive to the continuing evolution of market structures and products and supportive of capital formation in Ontario. The OSC must carefully balance the desire to improve access to capital with the need to retain appropriate investor protections. The 2015-2016 SoP sets out the OSC's key priorities to meet these challenges. Achievement of these priorities is a key driver of the proposed increases to the 2015 -2016 OSC Budget as this will require focused investments in the following four areas:

- improving education, outreach and advocacy through creation of the new Office of Investor Policy, Education and Outreach
- development of a new regulatory framework (including supervision and oversight) for the derivatives market
- enhanced oversight of the exempt market

- improving the OSC's information technology, in particular to support a greater reliance on data and research.

The budget reflects an increase of 6.0% from the 2014–2015 budget. Salaries and benefits, which comprise $80.7 million or 73.9% of the budget, represent an increase of $4.8 million or 6.2% over 2014–2015 spending. The key reasons for this increase are:

- approval of new positions to support the investments noted above
- under-spending in 2014-2015 by maintaining vacancies for longer than planned as a cost control measure and due to some shifting or deferring of priorities as a result of the CMRA initiative. Therefore, budgeting of full-year costs for vacancies and staff hired throughout 2014–2015 contributes to the increase.

The OSC will maintain fiscal responsibility in its other operating areas as evidenced by the fact that budget amounts will decrease, or remain flat in approximately 40% of its operating branches. The budget also includes resources for work toward the successful implementation of the CMRA.

The capital budget primarily reflects the build-out of recently acquired additional space, as well as the cost to support the OSC's information technology needs, including a data warehouse to support Derivatives oversight.

(thousands)	2014-2015 Budget	2014-2015 Actual	2015-2016 Budget	2015-16 Budget to 2014-15 Budget		2015-16 Budget to 2014-15 Actual	
Revenues	101,325	101,622	115,782	14,457	14.3%	14,160	13.9%
Expenses	102,976	96,937	109,182	6,206	6.0%	12,245	12.6%
Deficiency of Revenue compared with Expenses	(1,651)	4,685	6,600	8,251		1,915	
Capital Expenditures	3,349	1,692	3,101	(248)		1,409	

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1.1.3 CSA Staff Notice 24-312 – Preparing for the Implementation of T+2 Settlement

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 24-312

Preparing for the Implementation of T+2 Settlement

April 2, 2015

Introduction

Staff of the Canadian Securities Administrators (CSA Staff or we) are publishing this notice to increase awareness and summarize our views with respect to a Canadian industry move to shorten the standard settlement cycle for most trades in securities from three days after the date of trade (T+3) to two days after the date of trade (T+2).

In October 2014, most of the markets in Europe moved from a T+3 settlement cycle to T+2.[1] The securities industry in the United States, led by the U.S. Depository Trust & Clearing Corporation (DTCC) and supported by the Securities Industry and Financial Markets Association (SIFMA), has announced plans to shorten the settlement cycle to T+2 from the current T+3.[2] DTCC and SIFMA have established a broadly-based set of working groups with a mandate to report their findings in April, 2015. The plan is to recommend a T+2 implementation date at that time.

Feedback from industry consultations

During the Fall of 2014, in anticipation of the U.S. move to a shorter settlement cycle, staff from the Ontario Securities Commission (OSC) conducted a sample of industry interviews to gain a sense of the readiness of the Canadian industry to make the move to T+2. All the industry participants interviewed expressed the view that the Canadian industry must make the move to T+2 at the same time as the U.S. markets. Failure to do so would be detrimental to the Canadian capital markets due to the interconnectedness of our markets (i.e., the large volumes and value of cross-border trades and the large number of inter-listed securities). At the same time, there would appear to be little, or no, benefit to be gained by moving prior to the U.S.

There was a consensus from the interviews that the overall industry would be able to make a smooth transition to T+2 once the date has been set. No significant stumbling blocks were identified. We strongly support the need for the Canadian industry to migrate to T+2 on the same timetable as the U.S.

Canadian Capital Markets Association (CCMA)

Established in 2000, the CCMA was launched as a forum to identify and recommend ways for the industry to meet the challenges facing the Canadian capital markets, particularly in the post-trade clearing and settlement area. The CCMA's main focus until 2008 was to coordinate the industry's initiatives to meet the institutional trade matching (ITM) requirements of National Instrument 24-101 *Institutional Trade Matching and Settlement* (NI 24-101) by ensuring that a cross-section of representatives from the sell side, buy side, custodial, market infrastructure and service provider sectors were participating on various CCMA sub-committees and working groups. However, once NI 24-101 was implemented, the industry made a decision to decommission the active management of the CCMA.[3]

We support the need for a broadly based industry body to co-ordinate efforts to move to T+2. To be effective, we expect any industry-based body and its working groups to be widely representative of all stakeholders. Certain industry stakeholders have undertaken to facilitate reinvolving the CCMA as the industry body coordinating efforts in post-trade clearing and settlement, this time while the Canadian securities industry prepares the transition to T+2. In addition, the OSC interviews with industry participants identified several inefficiencies with current settlement processes, particularly where lack of industry standards appear to continue to impede the efficiency of ITM processes and practices. We will raise these matters with the industry body for its consideration.

1 Germany had been at a T+2 cycle for some time.

2 See, for example, April 16, 2014 press release "SIFMA Supports Move to Shorten Settlement Cycle" at: http://www.sifma.org/newsroom/2014/sifma_supports_move_to_shorten_settlement_cycle/

3 See CCMA News, Volume 30, August 2008, available at http://www.ccma-acmc.ca/en/files/CCMA%20News%20Volume%2030_online%20version.pdf

NI 24-101

NI 24-101 came into force in 2007 and was developed largely to monitor and encourage more efficient and timely ITM processes and practices in Canada. Under NI 24-101, investment advisers and dealers are required to complete and file exception reports for institutional trades not meeting the matching threshold in NI 24-101 (90% of trades by value and volume matched by noon on T+1). Speedy and accurate ITM processes and practices are an essential pre-condition to avoiding settlement failures in a T+3 or, more importantly, T+2 settlement cycle environment.

A number of those interviewed by the OSC commented favourably on the impact that NI 24-101 has had as a catalyst for initiating action to improve the efficiency and timeliness of their ITM processes and practices. With the prospect of a T+2 settlement cycle becoming the global standard and being implemented in Canada, we believe that the trade-matching threshold should be revised to better facilitate readiness for T+2 settlement. We will be considering whether to recommend any amendments to NI 24-101. An option we may examine is whether a change to the matching target from 90% at noon on T+1 to 95% at midnight on T+1 may provide a better proxy for T+2 settlement readiness. We may also explore whether a *de minimis* provision in the exception reporting requirement — which would relieve market participants with minimal institutional trading activity from filing such reports — is necessary. These proposed changes may have the benefit of reducing the number of exception reports filed by entities, enabling a more accurate focus on those entities that are having operational challenges in meeting a T+2 settlement standard.

Questions

Questions with respect to this Notice may be referred to:

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1.2 Notices of Hearing

1.2.1 1415409 Ontario Inc. et al. – ss. 127, 127.1

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
1415409 ONTARIO INC., TITLE ONE CLOSING INC., RAVINDRA DAVE, CHANDRAMATTIE DAVE, and AMETRA DAVE

NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O., c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, 17th Floor, commencing on April 15, 2015, at 10 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders:

a. that trading in any securities or derivatives by Chandramattie Dave ("Chandramattie"), Ravindra Dave ("Ravindra"), Ametra Dave ("Ametra"), 1415409 Ontario Inc., and Title One Closing Inc. (collectively, the "Respondents") cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;

b. that the acquisition of any securities by the Respondents is prohibited permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

c. that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

d. that the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

e. that Chandramattie, Ravindra, and Ametra resign one or more positions that he or she holds as a director or officer of any issuer, registrant, or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

f. that Chandramattie, Ravindra, and Ametra be prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager, permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

g. that the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager, or as a promoter, permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

h. that each of the Respondents pay an administrative penalty of not more than $1 million for each failure by the respective Respondent to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

i. that each of the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

j. that the Respondents be ordered to pay the costs of the Commission's investigation and the hearing, pursuant to section 127.1 of the Act; and

k. such other order as the Commission considers appropriate in the public interest.

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission, dated March 17, 2015, and such further allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place stated above, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceedings;

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto, this 17th day of March, 2015.

"Josée Turcotte"
Secretary to the Commission

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
1415409 ONTARIO INC., TITLE ONE CLOSING INC.,
RAVINDRA DAVE, CHANDRAMATTIE DAVE,
and AMETRA DAVE

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("**Staff**") make the following allegations:

A. OVERVIEW

1. This proceeding involves an investment scheme that was created and carried out in Ontario by Chandramattie Dave (also known as Rita Bahadur) ("**Chandramattie**"), Ravindra Dave (also known as Dave Ravindra) ("**Ravindra**"), Ametra Dave (also known as Annie Dave) ("**Ametra**"), 1415409 Ontario Inc. ("**1415409**"), and Title One Closing Inc. ("**TOC**") (collectively, the "**Respondents**") during the period of about January 1, 2009, to December 31, 2012 (the "**Material Time**").

2. During the Material Time, the Respondents engaged in unregistered trading and illegal distribution through the sale of securities to approximately 34 Ontario investors, from whom the Respondents raised approximately $5.4 million in investor funds.

3. Furthermore, Chandramattie and Ravindra engaged in fraudulent conduct by making misleading or untrue statements to investors regarding the use of investor funds. Ametra engaged in fraudulent conduct by using investor funds to pay investment returns and redemptions to other investors. Chandramattie, Ravindra, and Ametra engaged in fraudulent conduct by using investor funds for other business purposes, and for personal benefit.

4. The Respondents have acted in a manner contrary to Ontario securities law and contrary to the public interest.

B. THE RESPONDENTS

5. 1415409 was incorporated as an Ontario corporation in April of 2000 (its corporate registration was cancelled on December 8, 2012). Its registered office address was in Mississauga, Ontario. 1415409 has never been registered with the Ontario Securities Commission (the "Commission") in any capacity.

6. TOC was incorporated as an Ontario corporation in December of 2001. Its registered office address is in Mississauga, Ontario. TOC has never been registered with the Commission in any capacity.

7. 1415409 and TOC are not reporting issuers in Ontario. Neither company has ever filed a preliminary prospectus or a prospectus with the Commission or obtained receipts for them from the Director.

8. Ravindra is a resident of Mississauga, Ontario. He was one of the founding directors of TOC, and is one of the directing minds of TOC. He has never been registered with the Commission in any capacity.

9. Chandramattie is a resident of Mississauga, Ontario, and, during the Material Time, was the spouse of Ravindra. She was the President, the Secretary, and a Director of 1415409.

10. Chandramattie was previously registered with the Commission as a salesperson in the category of "mutual fund dealer" and "limited market dealer" from February 21, 2000, to January 30, 2006. She has not been registered with the Commission in any capacity since that time.

11. Ametra is a resident of Mississauga, Ontario, and is the daughter of Ravindra and Chandramattie. She is the President, Secretary, and sole director of TOC. She has never been registered with the Commission in any capacity.

C. PARTICULARS OF THE ALLEGATIONS

12. During the Material Time, Ravindra and Chandramattie presented seminars to the public in Ontario, Alberta, and British Columbia that purported to provide information and advice regarding real estate related investments.

13. At many of these seminars, Ravindra and Chandramattie promoted membership in their organization Canada Real Estate Investment Group ("CANREIG"). Individuals who purchased membership in CANREIG received access to these seminars.

14. Ravindra and Chandramattie used these seminars and membership in CANREIG to promote the investment of funds with corporations owned or controlled by them.

(i) Unregistered Trading and Illegal Distribution

15. During the Material Time, Ravindra and Chandramattie sold promissory notes totalling approximately $5.4 million to at least 34 Ontario investors (the "Promissory Notes"). Investors were told that their funds were being loaned to other individuals or companies through CANREIG or related companies, and that investors would receive a fixed return of 10% to 20% per year based on the profits generated from these loans.

16. These Promissory Notes were issued by 1415409 and/or Chandramattie.

17. Each Promissory Note evidenced indebtedness and/or was an "investment contract" and therefore a "security" as defined in subsection 1(1) of the Ontario Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act").

18. Ravindra and Chandramattie solicited Ontario residents to enter into the Promissory Notes by meeting with potential investors, discussing the nature of the investment, and making representations regarding the purported profits they would earn by entering into the investment.

19. Ravindra and Chandramattie directed investors to transfer or deposit their funds into a bank account in the name of TOC, which Ametra controlled and was the signatory.

20. As noted above, none of the Respondents were registered with the Commission during the Material Time. No exemptions from registration were available to them under the Act, and they have never filed a Form 45-106F1 ("Report of Exempt Distribution") with the Commission.

21. The sales of the Promissory Notes were trades in securities not previously issued and were therefore distributions. During the Relevant Period, The Respondents did not file a preliminary prospectus and prospectus with the Commission or obtain receipts for them from the Director as required by subsection 53(1) of the Act.

22. Many of the investors did not qualify as accredited investors or meet applicable exemptions from prospectus requirements.

23. By engaging in the conduct described above, the Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities and participated in acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of securities not previously issued for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the Act, contrary to sections 25 and 53 of the Act and contrary to the public interest.

(ii) Fraudulent Conduct

24. Chandramattie and Ravindra represented to investors that their funds would be loaned to other individuals or companies, and that investors would receive a fixed return based on the profits generated from these loans. These statements were untrue or misleading and perpetrated a fraud on investors.

25. As noted above, during the Material Time the Respondents received approximately $5.4 million from at least 34 investors. These investors received Promissory Notes in return. Approximately $2.1 million was paid back to these investors to partially satisfy investment return and redemption payments.

26. Also during the Material Time, the Respondents received an additional approximately $3.1 million from approximately 34 other individuals and companies, who did not receive Promissory Notes. The total amount returned to these investors was approximately $875,000.

27. All of the funds taken in by the Respondents were comingled in a bank account held in the name of TOC, which Ametra controlled and was the signatory.

28. Contrary to the representations Chandramattie and Ravindra made to investors, funds raised from the sale of Promissory Notes to some investors were used to satisfy investment returns and redemption payments to other investors.

29. Also contrary to the representations Chandramattie and Ravindra made to investors, Ametra directed approximately $2 million of investor funds for the personal benefit of Chandramattie, Ravindra, and Ametra and to the detriment of investors:

    (i) approximately $1 million was transferred to bank accounts held in the name of companies owned or controlled by family members or related parties of Ravindra, Chandramattie, and/or Ametra;

    (ii) approximately $750,000 was paid to family members or related parties of Ravindra, Chandramattie, and/or Ametra;

    (iii) approximately $150,000 was paid to personal credit cards in the names of Ravindra, Ametra, and related parties;

    (iv) approximately $90,000 was used to make payments to mortgages on properties owned by Ametra; and

    (v) approximately $15,000 was used for expenditures that benefitted Ravindra.

30. Approximately $2.0 million was paid to other individuals, some of which may have been in respect of fees for services, and some of which may have been in respect of investments made prior to the Material Period.

31. Approximately $1.5 million was paid to other companies, some of which may have been in respect of fees for services, and some of which may have been transfers to associated companies conducting business in other provinces.

32. As the signatory of TOC's bank account, Ametra controlled the release of funds raised from investors. She signed all cheques issued from TOC's bank accounts.

33. By engaging in the conduct described above, Chandramattie, Ravindra, and Ametra engaged in or participated in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to paragraph 126.1(b) of the Act.

D. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

34. The specific allegations advanced by Staff are:

    (a) During the Material Time, the Respondents engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances where there were no exemptions available to them under the Act, contrary to paragraph 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced on January 1, 2009, and contrary to section 25(1) of the Act as subsequently amended on September 28, 2009;

    (b) During the Material Time, the Respondents traded securities when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act;

    (c) During the Material Time, Chandramattie, Ravindra, and Ametra engaged in or participated in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to paragraph 126.1(b) of the Act;

    (d) During the Material Time, Chandramattie, being an officer and director of 1415409, authorized, permitted or acquiesced in 1415409's non-compliance with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

    (e) During the Material Time, Ametra, being an officer and the sole director of TOC, authorized, permitted or acquiesced in TOC's non-compliance with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act.

35. By reason of the foregoing, the Respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest such that it is in the public interest to make orders under section 127 of the Act.

36. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, March 17, 2015.

1.4 Notices from the Office of the Secretary

1.4.1 Paul Azeff et al.

FOR IMMEDIATE RELEASE
March 25, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW, MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

TORONTO – Following the hearing on the merits in the above named matter, the Commission issued its Reasons and Decision.

The Commission also issued an Order in the above named matter which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on May 21, 2015 at 9:30 a.m. or such further or other dates as agreed by the parties and set by the Office of the Secretary.

A copy of the Reasons and Decision dated March 24, 2015 and the Order dated March 24, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 1415409 Ontario Inc. et al.

FOR IMMEDIATE RELEASE
March 25, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
1415409 ONTARIO INC., TITLE ONE CLOSING INC., RAVINDRA DAVE, CHANDRAMATTIE DAVE and AMETRA DAVE

TORONTO – The Office of the Secretary issued a Notice of Hearing March 17, 2015 setting the matter down to be heard on April 15, 2015 at 10:00 a.m. as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated March 17, 2015 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 17, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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media_inquiries@osc.gov.on.ca

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1-877-785-1555 (Toll Free)

1.4.3 Greenstar Agricultural Corporation and Lianyun Guan

FOR IMMEDIATE RELEASE
March 25, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
GREENSTAR AGRICULTURAL CORPORATION
AND LIANYUN GUAN

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on April 2, 2015 at 10:00 a.m. will be heard on April 2, 2015 at 11:30 a.m.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Murgor Resources Inc. – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

March 26, 2015

Murgor Resources Inc.
178 Ontario Street, Suite 203
Kingston, Ontario K7L 2Y8

Dear Sirs/Mesdames:

Re: Murgor Resources Inc. (the Applicant) – Application for a decision under the securities legislation of Ontario, Alberta and Québec (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Shannon O'Hearn"
Manager, Corporate Finance
Ontario Securities Commission

2.1.2 U.S Silver & Gold Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application for an order than the issuer is not a reporting issuer under applicable securities laws – issuer has outstanding warrants exercisable into securities of parent and restricted share units that are redeemable for cash based on the fair market value of the parent's shares – warrant holders and restricted share unit holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 1(10)(a)(ii).

March 27, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA AND BRITISH COLUMBIA
(The Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
U.S. SILVER & GOLD INC.
(The Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer is not a reporting issuer in the Jurisdictions (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application),

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 Definitions have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation existing under the laws of Ontario and was formed by the amalgamation (the **Amalgamation**) of U.S. Silver & Gold Inc. (**Target**) and 2441996 Ontario Inc. (**Amalgamation Sub**) pursuant to a plan of arrangement (the Arrangement) under section 182 of the *Business Corporations Act* (Ontario) (the **OBCA**), which became effective at 12:01 a.m. (the **Effective Time**) on December 23, 2014 (the **Effective Date**). The Filer's head office is located at Suite 2870, 145 King Street West, Toronto, Ontario, M5H 1J8.

2. Scorpio Mining Corporation (**Acquiror**) is a corporation existing under the laws of Canada. The authorized capital of Acquiror consists of an unlimited number of common shares (**Acquiror Shares**). The Acquiror Shares are listed on the

Toronto Stock Exchange (the **TSX**) under the symbol "SPM". Acquiror is a reporting issuer in the Provinces of Alberta, British Columbia, Ontario and Québec.

3. Immediately prior to the Effective Time, Target was a corporation existing under the laws of Ontario and had the following outstanding securities: (i) 81,826,629 common shares (**Target Shares**); (ii) 6,588,608 options to purchase Target Shares (**Target Options**); and (iii) 23,069,867 warrants to purchase Target Shares (**Target Warrants**). The Target Shares were listed on the TSX under the symbol "USA". The Target Warrants were not listed on any exchange. Target also had restricted share units (**Target RSUs**) outstanding in respect of 841,481 Target Shares, each of which upon redemption in accordance with the terms of the restricted share unit plan of Target (the **Target RSU Plan**) entitled the holder thereof to a cash payment from Target based on the fair market value of the Target Shares. Pursuant to the terms of the Target RSU Plan, the Target RSUs were non-transferrable. Target was a reporting issuer in each of the Jurisdictions.

4. The authorized capital of the Filer, being the successor to Target following the Amalgamation, consists of an unlimited number of common shares (**Common Shares**). As of the date hereof, all of the outstanding Common Shares are held by Acquiror. The Filer has 23,069,867 warrants (**Warrants**) outstanding, each of which is exercisable for Acquiror Shares, as described below. The Filer also has restricted share units (**RSUs**) outstanding in respect of 1,843,410 Acquiror Shares, each of which upon redemption in accordance with the terms of the restricted share unit plan of the Filer (the **RSU Plan**) entitles the holder thereof to a cash payment from the Filer based on the fair market value of the Acquiror Shares. The Filer does not have any debt securities outstanding.

5. Immediately prior to the Effective Time, Amalgamation Sub was a corporation existing under the laws of Ontario and was wholly-owned by Acquiror.

6. The holders of Target Warrants, Target Options and Target RSUs received notice of the meeting of the holders of Target Shares to consider the Arrangement.

7. Pursuant to the Arrangement, among other things, the following occurred as of the Effective Time:

   (a) Target and Amalgamation Sub amalgamated to form the Filer. On the Amalgamation:

      (i) each outstanding common share of Amalgamation Sub held by Acquiror was exchanged for a Common Share;

      (ii) each outstanding Target Share was exchanged for 1.68 Acquiror Shares (the **Exchange Ratio**);

      (iii) the Filer issued additional Common Shares to Acquiror; and

      (iv) each outstanding Target Option was exchanged for an option to purchase Acquiror Shares (an **Acquiror Option**) based on the Exchange Ratio; and

   (b) the Target RSU Plan was amended to provide that the value of each Target RSU outstanding immediately prior to the Effective Time was adjusted based on the Exchange Ratio and the obligation to make a payment in respect of each Target RSU was adjusted such that following the Effective Time any payments to be made on the redemption of the Target RSUs would be based on the fair market value of the Acquiror Shares.

8. As a result of the Amalgamation (i) the Filer became liable for the obligations of Target in respect of each Target Warrant and each Target Warrant became a Warrant and (ii) the Filer became liable for the obligations of Target in respect of the Target RSU Plan and each Target RSU, the Target RSU Plan became the RSU Plan and each Target RSU became an RSU. Acquiror has guaranteed the obligations of the Filer to make payments on the redemption of the RSU.

9. Following the Effective Date, the Acquiror Shares issued under the Arrangement were listed on the TSX and additional Acquiror Shares were reserved for issuance upon exercise of the Acquiror Options and the Warrants.

10. The Common Shares (formerly Target Shares) were delisted from the TSX as of the close of business on December 31, 2014.

11. Following the Effective Date, pursuant to the terms of the Warrants, each holder of Warrants outstanding immediately prior to the Effective Date became entitled to receive, upon the exercise of such Warrants, in lieu of each Target Share to which such holder was previously entitled, 1.68 Acquiror Shares, subject to adjustment in accordance with the terms of such Warrants. As a party to the Arrangement, Acquiror is obligated to issue the number of Acquiror Shares required

to meet the Filer's obligations upon exercise of the Warrants. The Filer is not required to remain a reporting issuer pursuant to the terms of the Warrants.

12. The only outstanding securities of the Filer held by persons other than Acquiror are the Warrants and the RSUs. The Filer has made diligent enquiry based on a review of its books and records to confirm the number of beneficial holders of the Warrants and the RSUs. To the best of the Filer's knowledge and belief, there are 60 beneficial holders of Warrants, 41 of which are in Ontario. To the best of the Filer's knowledge and belief, there are 20 beneficial holders of RSUs, five of whom are in Ontario and 15 of whom are in the United States. The RSUs were issued to employees and officers of Target. Pursuant to the terms of the RSU Plan, the RSUs are non-transferrable.

13. As a result of the Arrangement, the Filer became a reporting issuer in the Jurisdictions because Target, one of the amalgamating corporations, was a reporting issuer in the Jurisdictions for a period of at least 12 months prior to the Effective Date.

14. The Filer is not eligible to surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* because the Filer has more than 50 securityholders. As a result, and because the Filer's outstanding securities are beneficially held, directly or indirectly, by more than 15 securityholders in Ontario and more than 51 securityholders worldwide, the Filer is not eligible to apply to cease to be a reporting issuer under the simplified procedure in CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer*.

15. No securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

16. The Filer has no intention to seek public financing by way of an offering of securities.

17. The Filer has separately applied for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public.

18. The Filer is not a reporting issuer in any jurisdiction of Canada other than the Jurisdictions. The Filer is applying for exemptive relief to cease to be a reporting issuer in each of the Jurisdictions.

19. Upon granting of the requested exemptive relief, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

20. Neither the Filer nor Acquiror is in default of any of its obligations under the Legislation as a reporting issuer.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

“James D. Carnwath”
Ontario Securities Commission

“Deborah Leckman”
Ontario Securities Commission

2.1.3 Brookfield Infrastructure Partners L.P.

Headnote

NP 11-203 – Application for relief from requirement to incorporate by reference the financial statements of an equity method investee which are included in the Filer's Form 20-F – Relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, sections 3.1, 3.2, and 8.1.
Form 44-101 F1 Short Form Prospectus, Item 11.

February 23, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO
(THE JURISDICTION)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
BROOKFIELD INFRASTRUCTURE PARTNERS L.P.
(THE FILER)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer from:

(a) the requirements in Item 11.1 of Form 44-101F1 – *Short Form Prospectus* (**Form 44-101F1**) to incorporate by reference the Myria Financial Statements (as defined below) into the short form base shelf prospectus (the **Base Shelf Prospectus**) of the Filer dated June 4, 2013 and any prospectus supplement thereto (together with the Base Shelf Prospectus, the **Prospectus**) (the **Incorporation by Reference Requirements**); and

(b) the requirements of section 3.1 and section 3.2 of National Instrument 44-101 – *Short Form Prospectus Distributions* (**NI 44-101**), to the extent such sections would deem the Myria Financial Statements to be incorporated by reference in the Prospectus (the **Deemed Incorporation by Reference Requirements**),

(together, the **Exemption Sought**).

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earlier of: (a) the date on which the Filer issues a news release announcing that the Filer has entered into an agreement relating to an offering of securities under the Prospectus (as defined below); (b) the date on which the Filer otherwise publicly announces an offering of securities under the Prospectus; (c) the date on which the Filer files a prospectus supplement relating to an offering of securities under the Base Shelf Prospectus; (d) the date on which the Filer advises the principal regulator that there is no longer any need for the Application and the decision document to remain confidential; and (e) the date that is 90 days after the date of the decision document (the **Confidentiality Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a Bermuda exempted limited partnership that was established on May 21, 2007.

2. The Filer's head and registered office is located at 73 Front Street, Hamilton, HM 12, Bermuda.

3. The limited partnership units of the Filer are listed on the New York Stock Exchange and the Toronto Stock Exchange under the symbols "BIP" and "BIP.UN", respectively.

4. The Filer is a reporting issuer in all of the provinces and territories of Canada and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

5. The Filer is subject to Sections 13 and 15(d) of the U.S. *Securities Exchange Act of 1934*, as amended (the **1934 Act**), and has filed all reports required to be filed with the United States Securities and Exchange Commission (the **SEC**) under the 1934 Act.

6. The Filer is, to the best of its knowledge, in compliance with the requirements of the U.S. *Securities Act of 1933*, as amended, and the 1934 Act.

7. The Filer is not in default of any requirement of the Legislation or equivalent legislation in any of the provinces and territories of Canada.

8. The Filer will include a statement in each supplement to the Base Shelf Prospectus explaining that the Filer has received exemptive relief exempting the Filer from the requirement to incorporate by reference the Myria Financial Statements in such prospectus and identifying the exemptive relief decision.

Background

9. Pursuant to Regulation S-X, Rule 3-09 (**Rule 3-09**), a provision of U.S. securities regulation with no Canadian equivalent, the Filer has included financial statements of Myria Holdings Inc. (**Myria** or the **North American gas transmission operation**), an equity method investee, as of December 31, 2013 and 2012 and for the years ended December 31, 2013 and 2012, the six months ended December 31, 2011 and the year ended June 30, 2011 (the **Myria Financial Statements**) in its 2013 Form 20-F/A, Amendment No. 1 dated April 30, 2014 (the **2013 Form 20-F/A**), amending the Filer's 2013 Form 20-F for the fiscal year ended December 31, 2013 dated March 28, 2014 (as amended by the 2013 Form 20-F/A, the **2013 Form 20-F**).

10. If the Exemption Sought is not granted, then by virtue of the Myria Financial Statements being included in the 2013 Form 20-F, the Filer will be required to incorporate the Myria Financial Statements into the Prospectus under Item 11.1(1) of Form 44-101F1.

11. The Filer applies International Financial Reporting Standards as issued by the International Accounting Standards Board (**IFRS**). As required by IAS 28 (**2011**), Investments in Associates and Joint Ventures (IAS 28), the Filer applies the equity method of accounting for its interest in Myria. Furthermore, in accordance with IAS 16, Property, Plant and Equipment (**IAS 16**), the Filer uses the revaluation method of accounting for all classes of its property, plant and equipment, and this policy is applied to the property, plant and equipment within the Filer's North American gas transmission operation in accordance with paragraph 35 of IAS 28.

12. In 2013, the Filer's North American gas transmission operation was impacted by weak market fundamentals in the U.S. natural gas market. Consequently, the revaluation of property, plant and equipment within the Filer's investment

resulted in an impairment charge of US$275 million. The impairment was recorded in the statement of operating results for the year ended December 31, 2013 and, as the charge represents a write-down of property, plant and equipment within an investment in an associate, it was recognized within the share of (losses) earnings from investments in associates line item on the Filer's consolidated statement of operating results.

13. Rule 3-09 references significance tests prescribed by Article 1-02(w) of Regulation S-X. One of the tests, the "income test", when applied giving effect to the above-noted impairment charge, resulted in the conclusion that separate financial statements of Myria were required to be included in the 2013 Form 20-F, and accordingly the Filer filed the 2013 Form 20-F/A. This determination of "significance" under Rule 3-09 was driven exclusively by the above-noted impairment charge.

14. Prior to the year ended December 31, 2013, the Filer's North American gas transmission operation had consistently not met the significance threshold under the income and investment tests of Article 1-02(w) of Regulation S-X and, absent the above-noted impairment charge, would not have been considered significant to the Filer's 2013 results. The results of the significance tests applied to the North American gas transmission operation (except in the case of the 2013 calculation taking into account the impairment charge) are indicative that this operation is not significant under Rule 3-09 or otherwise material and does not require disclosure in the form of separate historical financial statements.

15. In addition, the Filer's North American gas transmission operation assets are now classified as "held for sale", as reflected in the Filer's press release dated February 3, 2015 reporting the Filer's year-end financial results.

16. The "significance threshold" under Rule 3-09 is met in respect of one year only and solely due to an unusual accounting charge, has not been met in the past, and is unlikely to be met in the future.

17. There is no provision in Canadian securities regulation that is equivalent to Rule 3-09. As such, the Myria Financial Statements would not be required under Item 11.1 of Form 44-101F1 to be incorporated by reference into a short form prospectus of an issuer that files annual information forms on Form 51-102F2 – *Annual Information Form* instead of Form 20-F.

18. The Filer has used all reasonable efforts to obtain the consent of the auditors of the Myria Financial Statements to the incorporation by reference of their auditors report in the Prospectus but has been unable to obtain their consent.

Enhanced Disclosure

19. The 2013 Form 20-F contains sufficient disclosure on the North American gas transmission operation to meet the requirements of Section 5.7 of National Instrument 51-102 – *Continuous Disclosure Obligations*. In addition, the Filer has undertaken certain disclosure enhancements in order to provide the Filer's financial statement users with relevant information pertaining to the impairment charge recorded in the Filer's investment in Myria. In particular, Note 12 beginning on page F-44 of the 2013 Form 20-F includes the following:

    (a) enhanced disclosures pertaining to the impairment charge that would have been required under IAS 36, Impairment of Assets (**IAS 36**) as if the Filer's North American gas transmission operation were a consolidated investee;

    (b) the disclosures that would have been required by IFRS 13, Fair Value Measurement (**IFRS 13**), as if the Filer's North American gas transmission operation were a consolidated investee; and

    (c) summarized financial information presentation requirements for equity method investees required by IFRS 12, Disclosure of Interests in Other Entities (**IFRS 12**), specifically those outlined in paragraphs B12 and B134.

20. The Filer has considered whether the inclusion of the Myria Financial Statements would provide meaningful incremental information to investors in light of the disclosure enhancements described above, and has concluded that this incremental information does not provide any additional meaningful information other than what is included in the 2013 Form 20-F. In making this determination, the following considerations were of primary importance:

    (a) The financial statements of Myria are prepared in accordance with U.S. Generally Accepted Accounting Principles (**U.S. GAAP**), whereby the revaluation method is not available as an accounting policy choice for the measurement of property, plant and equipment. Measurement of property, plant and equipment significantly impacts the reported results of the Filer's North American gas transmission operation, making the reporting results of the Filer determined in accordance with IFRS difficult to compare to the results determined in accordance with U.S. GAAP in the financial statements of Myria.
    (b) Similarly, the carrying values of property, plant and equipment of the Filer's North American gas transmission operation are significantly different in the Filer's equity accounted investee balance than the carrying values of

property, plant and equipment in the U.S. GAAP financial statements of Myria. This differential is due to the difference in the cost at which the Filer initially acquired its interest in the North American gas transmission operation compared to the value of the underlying assets that are reflected in the Myria Financial Statements.

(c) Although Myria recognized an impairment charge under U.S. GAAP as a result of the same weak market fundamentals in the U.S. natural gas market, due to the different cost basis and the fundamental difference in the measurement models for items of property, plant and equipment under U.S. GAAP and IFRS, the impairment charge recognized under U.S. GAAP is not comparable to the impairment charge recognized under IFRS.

(d) No material events requiring disclosure under either U.S. or Canadian regulations pertaining to the Filer's investment in Myria have occurred since the filing of the 2013 Form 20-F.

21. The Filer is of the view that the additional disclosure provided in note 12 to the 2013 Form 20-F contains sufficient information about the financial position of Myria on a basis that is consistent with that used in the Filer's consolidated financial statements.

22. The Prospectus, together with the documents incorporated by reference therein, will provide full, true and plain disclosure of all material facts relating to the securities to be distributed without incorporating by reference the Myria Financial Statements.

U.S. Offerings

23. The securities to be offered under the Prospectus are not proposed to be offered in the U.S. except to the extent that an exemption from the registration requirements of U.S. securities laws is available.

24. The Filer does not intend to conduct an offering in the U.S. in the future that would require the inclusion of the Myria Financial Statements in the applicable U.S. offering document.

25. The Filer does not anticipate requesting exemptive relief from the SEC to exclude the Myria Financial Statements from an applicable U.S. offering document in connection with an offering in the U.S.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

26. the Filer complies with all of the other requirements of NI 44-101 and National Instrument 44-102 – *Shelf Distributions*, except as varied by this Decision, any other exemption orders obtained from the appropriate securities regulatory authority, or as permitted by the Legislation;

27. any prospectus supplement for any future offering of the Filer under the Base Shelf Prospectus incorporates by reference:

(a) the most recent Annual Report on Form 20-F of the Filer filed with the SEC, excluding the Myria Financial Statements if applicable; and

(b) any Annual Reports on Form 20-F of the Filer filed with the SEC, excluding the Myria Financial Statements if applicable, required to be filed with the SEC or the Decision Maker, as applicable, subsequent to the date of the Prospectus, but prior to the termination of the particular offering; and

28. the representation in paragraph 8 remains true.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.4 Carfinco Financial Group Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., s. 1(10)(a)(ii).

Citation: Re Carfinco Financial Group Inc., 2015 ABASC 607

March 30, 2015

File No.: CMP0071410

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 2800, Commerce Court West
Toronto, ON M5L 1A9

Attention: Sandra Raath

Dear Madam:

Re: Carfinco Financial Group Inc. (the **Applicant**) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the **Jurisdictions**) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Cheryl McGillivray"
Manager, Corporate Finance

2.2 Orders

2.2.1 Paul Azeff et al.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW, MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)**

ORDER

WHEREAS on August 14, 2014, Staff of the Ontario Securities Commission (the "**Commission**") filed a Fresh As Amended Statement of Allegations with respect to the respondents Paul Azeff ("**Azeff**"), Korin Bobrow ("**Bobrow**"), Mitchell Finkelstein ("**Finkelstein**"), Howard Jeffrey Miller ("**Miller**") and Man Kin Cheng (a.k.a. Francis Cheng) ("**Cheng**") (collectively, the "**Respondents**") relating to a hearing to held pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Securities Act***");

AND WHEREAS the hearing on the merits in this matter was held before the Commission over the course of 24 hearing days beginning on September 29, 2014 and concluding on December 15, 2014 ("**Merits Hearing**");

AND WHEREAS following the Merits Hearing, the Commission issued its Reasons and Decision on March 24, 2015, including findings against all of the Respondents;

AND WHEREAS the Commission is of the opinion that it is in the public interest to issue this Order;

IT IS ORDERED that:

1. Staff shall serve and file written submissions on sanctions and costs by 4:00 p.m. on April 13, 2015;

2. Respondents shall serve and file responding written submissions on sanctions and costs by 4:00 p.m. on May 6, 2015;

3. Staff shall serve and file reply written submissions on sanctions and costs, if any, by 4:00 p.m. on May 14, 2015;

4. the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on May 21, 2015, at 9:30 a.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary;

5. upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding; and

6. The parties shall provide the Registrar, within 45 days of this order, with anonymized copies of their Merits Hearing submissions consistent with the Merits Hearing Reasons and Decision in this matter.

DATED at Toronto this 24th day of March, 2015.

"Alan Lenczner"

"AnneMarie Ryan"

"Catherine Bateman"

2.2.2 BlackIce Enterprise Risk Management Inc. – s. 144

Headnote

Permanent issuer cease-trade order revoked where the issuer has remedied its default in respect of disclosure requirements under the Act.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 144.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED (the Act)

AND

IN THE MATTER OF
BLACKICE ENTERPRISE RISK MANAGEMENT INC.

ORDER
(Section 144)

WHEREAS the securities of BlackIce Enterprise Risk Management Inc. (the **Applicant**) are subject to a temporary cease trade order made by the Director dated January 9, 2015 under paragraph 2 of subsection 127(1) and subsection 127(5) of the *Ontario Securities Act* (the Act) and a further cease trade order made by the Director on January 21, 2015 under paragraph 2 of subsection 127(1) of the Act (collectively, the **Ontario Cease Trade Order**), ordering that all trading in the securities of the Applicant cease until the Ontario Cease Trade Order is revoked by the Director;

AND WHEREAS the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order;

AND WHEREAS the Applicant has applied to the Ontario Securities Commission (the Commission) under section 144 of the Act for a revocation of the Cease Trade Order.

Representations

This order is based on the following facts represented by the Applicant:

1. The Applicant is a reporting issuer in the provinces of British Columbia, Alberta and Ontario.
2. The Applicant is not in default of any requirements under Ontario securities law.
3. The Applicant has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law.
4. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid.
5. The Applicant's SEDAR profile and SEDI issuer profile supplement are current and accurate.
6. The Applicant was also subject to a similar cease trade order issued by the British Columbia Securities Commission dated January 6, 2015 as a result of the failure to make the filings described in the cease trade order, which order was revoked on March 19, 2015.
7. Upon the issuance of this revocation order, the Applicant will issue a news release announcing the revocation of the Cease Trade Order. The Applicant will concurrently file the news release and a material change report regarding the revocation of the Cease Trade Order on SEDAR.

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order.

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is hereby revoked.

DATED at Toronto this 27th day of March, 2015

"Sonny Randhawa"
Manager, Corporate Finance

2.2.3 U.S. Silver & Gold Inc. – s. 1(6) of the OBCA

Headnote

Subsection 1(6) of the Business Corporations Act (Ontario) – application for an order that an issuer is deemed to have ceased to be offering its securities to the public – the applicant is a wholly owned subsidiary of another issuer as a result of a plan of arrangement under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B. as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990, c. B.16, AS AMENDED
(THE "OBCA")

AND

IN THE MATTER OF
U.S. SILVER & GOLD INC. (THE "APPLICANT")

ORDER
(Subsection 1(6) Of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the "**Commission**") for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA and has an authorized capital consisting of an unlimited number of common shares ("Common Shares").

2. The Applicant's head office is located at Suite 2870, 145 King Street West, Toronto, Ontario, M5H 1J8.

3. The Applicant was formed by the amalgamation (the "**Amalgamation**") of U.S. Silver & Gold Inc. ("**Target**") and 2441996 Ontario Inc. ("**Amalgamation Sub**") pursuant to a plan of arrangement (the "Arrangement") under section 182 of OBCA, which became effective at 12:01 a.m. (the "**Effective Time**") on December 23, 2014 (the "**Effective Date**").

4. Scorpio Mining Corporation ("**Acquiror**") is a corporation existing under the laws of Canada. The authorized capital of Acquiror consists of an unlimited number of common shares ("**Acquiror Shares**"). The Acquiror Shares are listed on the Toronto Stock Exchange (the "**TSX**") under the symbol "SPM".

5. Immediately prior to the Effective Time, Target was a corporation existing under the laws of Ontario and had the following outstanding securities: (i) 81,826,629 common shares ("Target Shares"); (ii) 6,588,608 options to purchase Target Shares ("**Target Options**"); and (iii) 23,069,867 warrants to purchase Target Shares ("**Target Warrants**"). The Target Shares were listed on the TSX under the symbol "USA". The Target Warrants were not listed on any exchange. Target also had restricted share units ("**Target RSUs**") outstanding in respect of 841,481 Target Shares, each of which upon redemption in accordance with the terms of the restricted share unit plan of Target (the "**Target RSU Plan**") entitled the holder thereof to a cash payment from Target based on the fair market value of the Target Shares. Pursuant to the terms of the Target RSU Plan, the Target RSUs were non-transferrable. Target was a reporting issuer in each of the Provinces of Ontario, Alberta and British Columbia (the "**Jurisdictions**").

6. As of the date hereof, all of the outstanding Common Shares are held by Acquiror. The Applicant has 23,069,867 warrants ("**Warrants**") outstanding, each of which is exercisable for Acquiror Shares, as described below. The Applicant also has restricted share units ("**RSUs**") outstanding in respect of 1,843,410 Acquiror Shares, each of which upon redemption in accordance with the terms of the restricted share unit plan of the Applicant (the "**RSU Plan**") entitles the holder thereof to a cash payment from the Applicant based on the fair market value of the Acquiror Shares. The Applicant does not have any debt securities outstanding.

7. Immediately prior to the Effective Time, Amalgamation Sub was a corporation existing under the laws of Ontario and was wholly-owned by Acquiror.

8. The holders of Target Warrants, Target Options and Target RSUs received notice of the meeting of the holders of Target Shares to consider the Arrangement.

9. Pursuant to the Arrangement, among other things, the following occurred as of the Effective Time:

   (a) Target and Amalgamation Sub amalgamated to form the Applicant. On the Amalgamation:

      (i) each outstanding common share of Amalgamation Sub held by Acquiror was exchanged for a Common Share;

      (ii) each outstanding Target Share was exchanged for 1.68 Acquiror Shares (the "Exchange Ratio");

      (iii) the Applicant issued additional Common Shares to Acquiror; and

      (iv) each outstanding Target Option was exchanged for an option to purchase Acquiror Shares (an "Acquiror Option") based on the Exchange Ratio; and

   (b) the Target RSU Plan was amended to provide that the value of each Target RSU outstanding immediately prior to the Effective Time was adjusted based on the Exchange Ratio and the obligation to make a payment in respect of each Target RSU was adjusted such that following the Effective Time any payments to be made on the redemption of the Target RSUs would be based on the fair market value of the Acquiror Shares.

10. As a result of the Amalgamation (i) the Applicant became liable for the obligations of Target in respect of each Target Warrant and each Target Warrant became a Warrant and (ii) the Applicant became liable for the obligations of Target in respect of the Target RSU Plan and each Target RSU, the Target RSU Plan became the RSU Plan and each Target RSU became an RSU.

11. Following the Effective Date, the Acquiror Shares issued under the Arrangement were listed on the TSX and additional Acquiror Shares were reserved for issuance upon exercise of the Acquiror Options and the Warrants.

12. The Common Shares (formerly Target Shares) were delisted from the TSX as of the close of business on December 31, 2014.

13. Following the Effective Date, pursuant to the terms of the Warrants, each holder of Warrants outstanding immediately prior to the Effective Date became entitled to receive, upon the exercise of such Warrants, in lieu of each Target Share to which such holder was previously entitled, 1.68 Acquiror Shares, subject to adjustment in accordance with the terms of such Warrants. As a party to the Arrangement, Acquiror is obligated to issue the number of Acquiror Shares required to meet the Applicant's obligations upon exercise of the Warrants. The Applicant is not required to remain a reporting issuer pursuant to the terms of the Warrants.

14. The only outstanding securities of the Applicant held by persons other than Acquiror are the Warrants and the RSUs. The Applicant has made diligent enquiry based on a review of its books and records to confirm the number of beneficial holders of the Warrants and the RSUs. To the best of the Applicant's knowledge and belief, there are 60 beneficial holders of Warrants, 41 of which are in Ontario. To the best of the Applicant's knowledge and belief, there are 20 beneficial holders of RSUs, five of whom are in Ontario and 15 of whom are in the United States. The RSUs were issued to employees and officers of Target. Pursuant to the terms of the RSU Plan, the RSUs are non-transferrable.

15. No securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 – Marketplace Operation or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

16. The Applicant has no intention to seek public financing by way of an offering of securities.

17. As of the date hereof, the Applicant is a reporting issuer or equivalent in the Jurisdictions and is not in default of any of its obligations under the legislation in each of the Jurisdictions as a reporting issuer.

18. The Applicant has applied for exemptive relief to cease to be a reporting issuer in each of the Jurisdictions and upon the granting of the requested relief will not be a reporting issuer or equivalent in any jurisdiction of Canada.

AND UPON the Commission being satisfied to do so would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purposes of the OBCA.

DATED at Toronto, Ontario on this 27th day of March, 2015.

“James D. Carnwath”

“Deborah Leckman”

2.2.4 Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED (Act)

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR
SECURITIES LIMITED AND CDS CLEARING AND
DEPOSITORY SERVICES INC.

VARIATION ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated July 4, 2012, as varied and restated on December 21, 2012 and as varied on December 7, 2012, May 1, 2013, June 25, 2013, June 24, 2014, and January 27, 2015 pursuant to section 21.2 of the Act continuing the recognition of The Canadian Depository for Securities Limited (**CDS Ltd.**) and CDS Clearing and Depository Services Inc. as clearing agencies (the **Clearing Agency Recognition Order**);

AND WHEREAS CDS Ltd. has filed an application (**Application**) with the Commission to vary the Clearing Agency Recognition Order pursuant to section 144 of the Act to provide that the annual rebate calculation includes the incremental cost (**Base Period**) of providing sufficient liquidity facilities to enable the continued operation of CDS's New York Link/DTC Direct Link cross-border service;

AND WHEREAS the Commission has determined based on the Application and representations made by CDS Ltd. that it is not prejudicial to the public interest to vary the Clearing Agency Recognition Order to reflect the inclusion of the Base Period in the rebate model and specify that revenue over and above the Base Period shall be subject to CDS's established rebate model;

IT IS HEREBY ORDERED that, pursuant to section 144 of the Act, Section 3 of Appendix B of Schedule B of the Clearing Agency Recognition Order be deleted and replaced with the following:

"For the fiscal year commencing on November 1, 2012 and subsequent fiscal years starting on January 1, 2013, Maple shall share 50% of any increase in annual revenue on clearing and other core CDS services as compared to annual revenues in the fiscal year ending on October 31, 2012, with Participants, except in the case of the New York Link/DTC Direct Link Liquidity Premium (Liquidity Premium). For the fiscal year commencing on January 1, 2015 and subsequent fiscal years, TMX Group shall also share 50% of any increase in revenues with Participants applicable to the Liquidity Premium compared against the estimated annual revenue of the Liquidity Premium in the fiscal year ending December 31, 2015, and where the estimated annual revenue is equivalent to the annual incremental costs for the increase in the liquidity facility which was $690,000 for fiscal year ending December 31, 2015. Sharing of revenue on core services for any fiscal year shall be paid through one or more of the following methods as may be determined by CDS: an annual adjustment of the quoted fee at the start of that fiscal year, intra-year discount(s) and a year-end proportionate rebate by core service category to Participants (paid pro rata to Participants in accordance with the fees paid by such Participants for such core service)."

DATED at Toronto this 27 day of March, 2015.

"Deborah Leckman"

"Sarah B. Kavanagh"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Paul Azeff et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER
AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

REASONS AND DECISION

Hearing:	September 29-30, 2014 October 1-2, 10, 14, 16-17, 20, 22-24, 27, 30-31, 2014 November 3, 5-7, 11-12, 14, 2014 December 12 and 15, 2014		
Decision:	March 24, 2015		
Panel:	Alan J. Lenczner	–	Chair of the Panel
	AnneMarie Ryan	–	Commissioner
	Catherine E. Bateman	–	Commissioner
Appearances:	Donna Campbell Tamara Center Clare Devlin	–	For Staff of the Commission
	Gordon Capern Jeffrey Larry	–	For Mitchell Finkelstein
	Tyler Hodgson	–	For Paul Azeff and Korin Bobrow
	Simon Bieber Daniel Bernstein	–	For Howard Miller
	Janice Wright Greg Temelini		For Francis Cheng

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REASONS AND DECISION

I. OVERVIEW

[1] Staff of the Ontario Securities Commission ("**Staff**"), in the Fresh As Amended Statement of Allegations of August 14, 2014, alleges that, on six separate occasions, a lawyer tipped his friend, an investment adviser, and that four investment advisers engaged in insider trading or tipping, purchasing shares for themselves, family members and/or clients while in possession of material non-public information contrary to section 76 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***").

[2] Staff also alleges that these investment advisers acted contrary to the public interest by recommending the shares of target companies, about to be purchased, to their friends, families and clients.

[3] Staff's theory is that the close personal relationship between each tipper and his tippee, the constant communication between tipper and tippee and the voluminous, anomalous trading in the shares of target companies, about to be acquired, gives rise to inferences that tipping of, and trading on, material non-public information took place.

[4] In the years from November 2004 to August 2007, there were six impugned takeover transactions. Staff alleges that a compelling pattern of conduct emerges from the conduct of the five respondents. Staff make a number of allegations. Shortly before the public announcement of each takeover transaction, Mitchell Finkelstein, a mergers and acquisitions lawyer in Toronto, communicated with Paul Azeff, an investment adviser with CIBC in Montreal, and told him that an imminent takeover transaction was to occur. Azeff passed on this material non-public information to his partner Korin Bobrow with whom he shared a trading code DK4. Azeff and Bobrow then bought a large volume of shares of the target company for themselves, their family members and many important clients. They also told friends and, in particular, LK who, on some occasions, in turn, telephoned a friend and investment adviser in Toronto, Howard Miller. Miller then told his associate, Francis Cheng. Both Miller and Cheng immediately bought a significant volume of the target company shares for themselves, their family members and some clients.

[5] The respondents acknowledge the relationships, the communications and the trading, but emphatically deny the receipt or utilization of material non-public information. They assert that they had good reason, based on due diligence, to purchase the target shares and no motivation to engage in illegal activity that they understood, as professionals and registrants, would prejudice their successful careers.

[6] The main legal issues that are to be decided in this matter, with respect to each of the transactions, are:

(a) What were the undisclosed material facts?

(b) Was there communication of the undisclosed material facts (tipping) by someone in a special relationship as defined in subsections 76(5)(a)-(d) of the *Act* (eg. an officer, director or advisor engaged in some aspect of the transaction)?

(c) Did the tippee or successive tippee know or ought he reasonably to have known that he was receiving undisclosed material facts from someone himself in a special relationship pursuant to the expanded definition in subsection 76(5)(e) of the *Act*?

[7] Appended as a schedule to these reasons and decision are the relevant subsections of section 76 of the *Act*.

II. PATTERN OF CONDUCT

[8] Staff emphasizes that the pattern of telephone calls between Finkelstein and Azeff, in close proximity to voluminous trading of shares by Azeff and Bobrow in Montreal, followed by the migration of the material non-public information to Toronto through a single source, LK, and the immediate buying of shares of the target in Toronto leads to the inescapable conclusion that tipping and insider trading was being carried out by professionals, all of whom knew that such activity was proscribed conduct under the *Act*. This over-arching pattern, Staff alleges, should inform the Commission in its review of the six individual transactions alleged.

[9] We reject the submission that we should view each of the six transactions through the lens of a pattern and similar fact evidence. Although there are certain similarities with respect to the conduct of the respondents regarding each takeover bid, there are many more dissimilarities which render the prejudicial effect greater than the probative value. These dissimilarities include the fact that Azeff and Bobrow did not purchase shares of all six takeover target companies. Neither did Miller and Cheng, even though the source of their information, LK, did. The volume of trading by the respondents, the number of individuals trading and the rapid acquisition of shares in some cases was pronounced and, in others, it was not.

[10] We have determined that we must adjudicate each transaction separately and judge the conduct of each respondent against the allegations made with respect to him related only to that transaction.

III. THE RESPONDENTS

[11] There are five respondents, one lawyer and four registrants.

A. Mitchell Finkelstein

[12] Finkelstein completed high school and CEGEP in Montreal. He attended the University of Western Ontario graduating with a Bachelor of Business Administration and Commerce in 1990. While there, he became friends with, and a fraternity brother of, Paul Azeff, also a Montreal resident. Finkelstein then attended the law school at the University of Ottawa, receiving his LLB in 1994.

[13] Finkelstein joined Davies Ward Phillips and Vineberg (**Davies**) as an associate in 1997. He became a full equity partner in 2002. His area of practice from 1997 to 2010 was a corporate, commercial practice which encompassed financings, securities, mergers and acquisitions, takeovers and plans of arrangement.

[14] He was regarded by his colleagues as a highly intelligent, industrious, committed lawyer. His commitment is illustrated by the 1850 to 2400 billable hours recorded in the years in question, 2004 to 2007. In 2007, he was the recipient of a Lexpert Top 40 under 40 award.

[15] Finkelstein married Kim in 2000 and the couple have two children born in 2002 and 2004.

[16] Finkelstein, described as conservative of character, left the arrangement and planning of social occasions to his wife Kim.

B. Paul Azeff

[17] Azeff grew up and continues to live in Montreal. He attended the University of Western Ontario, obtaining his Bachelor of Arts in Literature in 1991. He moved back to Montreal after graduation, took the Canadian Securities Course and became a licensed investment adviser in 1992. He worked for Burns Fry, Marleau Lemire, Midland Walwyn, and Merrill Lynch until 2001. In 2001, the retail arm of Merrill Lynch was sold to CIBC Wood Gundy ("**CIBC**"). Azeff remained at CIBC until 2011 as sales manager at the Place Ville-Marie branch. This branch was the largest brokerage branch in Montreal and by 2004, Azeff had developed a big book of business with many clients.

[18] Azeff was first registered as a salesperson in Ontario in 1997, and was a dealer in the category of investment dealer beginning in 1998. In 2003, his registration was converted to that of a trading officer. In 2009, his registration was converted to that of a dealing representative until December 2010, when he was no longer registered in Ontario. In 2013, he again became registered in Ontario, subject to conditions, as a dealer in the category of investment dealer.

[19] Azeff was described as outgoing, gregarious, chatty, bright, a good broker with a network of friends and clients. In 2007, he made and received thousands of phone calls as captured by his extension at CIBC. If Azeff wanted to reach a friend or client, he would not hesitate to call four to five times in rapid succession if the first calls remained unanswered.

[20] In August 2004, Azeff married Oana. They had a joint trading account at CIBC.

[21] Azeff and Korin Bobrow met in high school and have been extremely close friends since. In 1995, Azeff and Bobrow formed a partnership at Marleau Lemire. Although not in a formal partnership while they worked at CIBC, they were in every sense of the word, partners. They shared a trading code DK4 for all their trading. They discussed investment ideas continuously. They shared their research. They looked after each other's clients when the other was absent from his adjacent desk.

C. Korin Bobrow

[22] Bobrow grew up in Montreal. He studied political science and philosophy at Carlton University, leaving it before graduation. He returned to Montreal in 1992, completed his Canadian Securities Course and became a full broker at Marleau

Lemire in 1994. In 1995, Azeff joined the firm and Azeff and Bobrow moved firms in lock step, always working together throughout their careers.

[23] Bobrow was first registered as a salesperson in Ontario in 2003, and maintained that registration until 2009. At that point, he was registered in Ontario as a dealer in the category of investment dealer until December 2010, when he ceased to be registered in Ontario. In 2013, he again became registered in Ontario, subject to conditions, as a dealer in the category of investment dealer.

[24] Azeff was more interested in the technical analysis and followed the U.S. and Canadian technical charting of stocks. Bobrow, on the other hand, concentrated more on the research embedded in the analysts' reports and macroeconomics.

[25] Bobrow married Marie-Josée in January 2004. He and his wife had a joint trading account at CIBC.

D. Howard Miller

[26] Miller did not testify at the hearing. Excerpts of his compelled testimony from 2009 were read into evidence.

[27] Miller grew up in Montreal and attended McGill University, obtaining a Bachelor of Science. He furthered his education achieving a Masters of Science and Masters of Business Administration. He began working as an investment adviser at CIBC in Toronto in 1995 and moved to TD Securities ("**TD**") in 2000. Shortly thereafter, he was promoted to vice-president and in fiscal 2007 was one of the firm's top ranked investment advisers nationally.

[28] Miller is married to Heidi-Lynn. Miller had trading authority over her accounts.

[29] Miller was first registered in Ontario as a salesperson in 1995. In 1999, his registration was converted to trading officer. For a short period in 2000, his registration reverted to salesperson before once again being amended to a trading officer. His registration as a trading officer continued until 2008. In 2009, he was once again registered as a salesperson with Raymond James and then shortly after it was amended to a dealing representative with terms and conditions. He has not been registered in Ontario since October 2010.

E. Man Kin Cheng (Francis Cheng)

[30] Cheng also did not testify. His compelled testimony from 2009 was read into evidence.

[31] Cheng grew up in Hong Kong, where his brother still resides. Cheng traded an account held in his brother's name at TD in Toronto.

[32] Cheng came to Canada in 1988, graduated from University of Toronto with a Bachelor of Arts in 1994 or 1995, completed the financial and industry courses for registration and the Canadian Hedge Fund Specialist Exam.

[33] He joined TD in 1999 and became a full investment adviser in 2001.

[34] Cheng was first registered in Ontario in 1998, as a salesperson at HSBC Securities. After moving to TD in 1999, he was registered as a salesperson through to September 2008. He has not been registered in Ontario since 2008.

[35] Cheng is married to Jennifer. She had a trading account in her own name, which was funded with her own money. She provided Cheng with her password and he made all of the investment decisions in the account and executed all the trading. Cheng did not have his own trading account because he had limited monies available for investment purposes.

IV. RELEVANT LAW

A. Section 76 of the *Act* – Insider Trading and Tipping

[36] The *Act* prohibits insider trading and tipping. The decided authorities in Canada and the U.S. view this offence, when established, as very serious; it is in the nature of a cancer which erodes public confidence in the capital markets (*Re Donnini* (2002), 25 OSCB 6225 at para. 202, citing *Re MCJC Holdings* (2002), 25 OSCB 1133 at 1135). Tipping is considered as equally offensive as insider trading. Tipping provides an informational advantage unavailable, and hence unfair, to other investors. The objectives of the *Act* are stated to be protection of the public and the promotion of the integrity of the capital markets. Nearly every Canadian is invested in the capital markets through a direct investment, a mutual fund, a pension plan or an RRSP.

[37] The capital formation process depends upon investors' confidence in the fairness of the securities markets. Confidence in the capital markets is a key component to corporate well-being. If confidence is eroded, liquid funds will migrate to those markets that are better regulated and have a higher reputation for integrity. Tipping and insider trading erode confidence when it

is perceived that someone has gained an advantage, not through skill and the courting of risk, but because of an informational advantage unavailable to other investors (*Re Suman* (2012) 35 OSCB 2809 ("***Suman***") at para. 23 aff'd 2013 ONSC 3192 (Div. Ct.)).

[38] In this case, the respondents are all professionals, a corporate, commercial lawyer and four licensed investment advisers, all of whom were aware of the seriousness with which securities regulators view illegal tipping and illegal insider trading and the need for confidentiality of material non-public information.

[39] Staff must establish all the elements of section 76 of the *Act*. The *Act* prohibits those in a special relationship with a reporting issuer from informing others of undisclosed material facts and from trading with knowledge of undisclosed material facts. Subsections 76 (1) and (2) of the *Act* provide:

> **76 (1)** No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.
>
> **(2)** No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

[40] Neither motive nor intent form a part of the legal requirements of the section.

B. Standard of Proof

[41] It is not disputed that the standard of proof applicable to the alleged offences in these proceedings is the balance of probabilities (*F(H) v. McDougall*, [2008] 3 S.C.R. 41 at para. 40 ("***F(H) v. McDougall***")).

[42] The evidence to establish the standard, on a balance of probabilities, must be clear, convincing and cogent. The question to be answered is: whether the alleged events, based on clear, convincing and cogent evidence, are more likely than not to have occurred (*F(H) v. McDougall*, *supra* para. 46; *Suman*, *supra* at para. 31).

C. Circumstantial Evidence

[43] Circumstantial evidence is clearly admissible (*Re Kusumoto*, 2007 ABASC 40 at paras. 73-74). It usually forms the bulk of the evidence in cases where insider trading and tipping is alleged. Some aspects of insider trading cases, such as the fiduciary duty and the duty not to disclose material non-public information, are relatively easy to prove. Other aspects, particularly tipping, are very difficult to prove as, generally, the only persons who have direct knowledge of the relevant communications are the wrongdoers themselves. As a result, insider trading and tipping cases are often established by inferences drawn from indirect evidence. In this case, circumstantial evidence is the evidence of communication, the relationship between the parties, the knowledge that the tipper informant had, the knowledge the tippee had, the trading by the tippee and/or successive tippees and the timing and volume of the trades in relation to the initiating conversations and successive tips.

[44] The Commission determined, in the circumstances of the *Suman* case, that:

> Knowledge of an undisclosed material fact may be properly inferred based on circumstantial evidence that includes proof of the ability and opportunity to acquire the information combined with evidence of well-timed, highly uncharacteristic, risky and highly profitable trades.
>
> (*Suman*, *supra* at para. 307)

[45] A variety of types of circumstantial evidence can be the indicia of insider trading or tipping:

(a) unusual trading patterns;

(b) a timely transaction in a stock shortly before a significant public announcement;

(c) a first time purchase of the stock;

(d) an abnormal concentration of trading by one brokerage firm or with one or a few brokers; and

(e) a trade that represents a very significant percentage of the particular portfolio.

[46] Motive and intent can also be weighed as facts when drawing inferences whether it is more probable than not that the alleged offences occurred.

[47] The indicators listed in the paragraphs above are not exhaustive. Nor is it necessary that all indicia be established in every case. Insider trading and tipping cases are established by a mosaic of circumstantial evidence which, when considered as a whole, leads to the inference that it is more likely than not that the trader, tipper or tippee possessed or communicated material non-public information.

[48] From circumstantial evidence which is firmly established, we are asked to draw inferences. Inferences can be drawn to determine whether it is more likely than not that the insider trading and tipping occurred. Inferences drawn must flow naturally and logically from the established facts. Inferences cannot be made where, objectively, they are unreasonable or illogical.

[49] Inferences drawn from speculated facts are legally unacceptable (*R v. Munoz*, [2006] O.J. No. 446 (Ont. S.C.J.) at para. 31; *Walton v. Alberta (Securities Commission)* 2014 ABCA 273 at paras. 27-29).

D. Material Fact

[50] A material fact, defined in subsection 1(1) of the *Act* is a fact that, objectively, would reasonably be expected to have a significant effect on the market price of the security in issue . The materiality of facts is an objective market impact test (*Re Donald* (2012) 35 OSCB 7383 ("***Donald***") at paras. 199 and 201; *Re YBM Magnex* (2003) 26 OSCB 5285 ("***YBM***") at para. 91). It is most often measured by contrasting the market impact of the public announcement with the price of the share on the date when a respondent had that information. In this hearing, we are dealing with material facts that have not been generally disclosed to the public, facts which we refer to hereafter as "**material non-public information**" or "**MNPI**".

[51] Knowledge that an acquirer had determined to acquire control of a target either by a takeover bid or by a plan of arrangement constitutes a material fact. Objectively, it is commonly anticipated that acquiring a control position of another company will be at a meaningful premium to the market price of the target (*Re Bennett*, [1996] 34 BCSCWS 55 at para. 486; *Suman*, *supra* at para. 11). In all six transactions, the public announcement of the transaction was at a premium to the market price.

E. Special Relationship

[52] The elements of a special relationship have raised significant debate, as it applies to tippees and, particularly, successive tippees.

[53] There is no doubt that officers and directors of an issuer are in a special relationship. So too, by virtue of subsection 76(5)(b) of the *Act* is any person or company engaged in a business or professional activity with or on behalf of the reporting issuer. Thus lawyers, business advisers and financial advisers are all in a special relationship.

[54] What is more difficult to determine is whether an alleged successive tippee, in this case Bobrow, Miller or Cheng are caught by subsection 76(5)(e) of the *Act* which focuses on the status of a tippee's direct informant and expressly includes an informant who is himself a tippee:

> [s. 76(5)(e)] A person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

[55] The two objectives of the *Act* are set out in subsection 1(1) of the *Act*. They are (a) the protection of the investing public; and (b) maintaining the integrity of the capital markets. The interpretation of every section of the *Act* must proceed from the plain and ordinary meaning given to the literal words in the provision viewed through the lens of the objectives of the *Act*.

[56] In *Danuke*, the Commission held that the respondents' trading while in possession of undisclosed material facts was contrary to the public interest (*Re Danuke* (1981), 2 O.S.C.B. 31c ("***Danuke***") at 43c). In that matter, the Commission stated:

> It is the Commission's view that all registrants ought to understand that they have a duty not to attempt to profit, directly or indirectly, through the use of inside information that they believe is confidential and know or should know came from a person having a special relationship with the source of the information.
>
> (*Danuke*, *supra* at para. 40c)

[57] The legislature, in promulgating subsection 76(5)(e) of the *Act*, intended to proscribe the abusive activities of an indefinite chain of indirect tippees. By using both the subjective element of "knows" and the objective test of "ought reasonably to

have known" the intent of the legislature was to encompass a broad spectrum of actors who impair confidence in the capital markets by using confidential information not available to all investors. At the same time, the legislature provided safeguards so that there would not be a regime of indefinite liability. If any person "knows" that the MNPI he has came from someone in a special relationship, ie. he is told that it came from a lawyer, banker, accountant, officer or director, etc., involved in the transaction, he is caught by the subsection whether or not his informant is such a person or has no direct involvement in the transaction. If, on the other hand, the successive tippee receives very detailed MNPI from his tipper, who has no involvement in the transaction, he may, nevertheless, be caught by the subsection if the cumulative effect of a number of factors makes it more probable than not that he "ought reasonably to have known" that the MNPI came from a person in a special relationship.

[58] The tippee does not necessarily need to know the identity of the initial tipper. In a situation involving a successive tippee, it is quite probable that the tippee will not know the identity of the original tipper. How then does one distinguish between trading by the tippee based on rumour, which is not a proscribed activity, and trading by the tippee based on an objective basis, i.e. that he ought reasonably to have known that the material information originated with a person defined in subsection 76(5) of the *Act*, e.g. an insider or professional adviser to the transaction?

[59] It can be readily seen that, with respect to successive tippees, it must always be asked whether the tippee, being considered as a wrongdoer, received material facts, which he reasonably knew or ought to have known came from someone who, in turn, knew or reasonably ought to have known came from a person in a special relationship.

[60] Counsel for Cheng put the necessary requirements very well and very succinctly. She said that two tests have to be met: an information connection to the issuer (i.e. possession of inside information) and a person connection. She said that the information connection test only, which she asserted is the only requirement in Australia and the United Kingdom, was not adopted in Ontario. It was not adopted in Ontario because it would make trading on the basis of market rumours, received from sources apparently unconnected to the issuer, illegal. A person connection is satisfied depending on the relationship between tipper and tippee. We agree that there is a dual test to satisfy the requirement of a special relationship.

[61] The difficulty is not with the first part of the test, i.e. the possession of inside, confidential, non-public, generally undisclosed information by the tippee. To prove that test on the balance of probabilities requires a comparison of what information the tippee has knowledge of, contrasted with whether that information is in the public domain.

[62] The content of the second part of the test, the "person connection" is more difficult. There is little or no guidance in the authorities. It is clear that there is a broad spectrum between two poles. On the one hand, there can be lawful trading by a tippee with possession of MNPI, but with no knowledge that it came from a person in a special relationship, a person that we are referring to as a "knowledgeable person". A knowledgeable person includes all those persons enumerated in section 76 of the *Act*, eg. officers, directors and other insiders of the target or the acquirer and professional advisers, lawyers, bankers, accountants, etc. involved in acting for a party to the transaction. At the other pole is illegal trading by a tippee based on MNPI, which he knows originated with a knowledgeable person.

[63] The statutory provision of "ought reasonably to have known" that the MNPI came from a knowledgeable person falls on the spectrum between the two poles. It demands an objective test, which can be articulated by the question: should a person standing in the shoes of the tippee, reasonably assume that the MNPI passed on to him originated with a knowledgeable person?

[64] The answer to that question lies in a list of factors to be considered:

(a) What is the relationship between the tipper and tippee? Are they close friends? Do they also have a professional relationship? Does the tippee know of the trading patterns of the tipper, successes and failures?

(b) What is the professional qualification and standing of the tipper? Is he a lawyer, businessman, accountant, banker, investment adviser? Does the tipper have a position which puts him in a milieu where transactions are discussed?

(c) What is the professional qualification of the tippee? Is he an investment adviser, investment banker, lawyer, businessman, accountant, etc.? Does his profession or position put him in a position to know he cannot take advantage of confidential information and therefore a higher standard of alertness is expected of him than from a member of the general public?

(d) How detailed and specific is the MNPI? Is it general such as X Co. is "in play"? Or is it more detailed in that the MNPI includes information that a takeover is occurring and/or information about price, structure and timing?

(e) How long after he receives the MNPI does he trade? Does a very short period of time give rise to the inference that the MNPI is more likely to have originated from a knowledgeable person?

(f) What intermediate steps before trading does the tippee take, if any, to verify the information received? Does the absence of any independent verification suggest a belief on the part of the tippee that the MNPI originated with a knowledgeable person?

(g) Has the tippee ever owned the particular stock before?

(h) Was the trade a significant one given the size of his portfolio?

[65] This list of factors that informs the assessment of "ought reasonably to have known" that the MNPI came from a person in a special relationship may vary depending on the factual context and the actors involved, but provides a reasonable guideline that can be applied in the vast majority of situations. The weight to be accorded to each factor will also vary. What is important is that the overall weight given to the aggregate of all the factual criteria compels the Commission to the conclusion that it is more probable than not that the tippee ought reasonably to have known that the MNPI he received originated from a knowledgeable person, i.e. one who was in a special relationship as enumerated in section 76 of the *Act*.

F. Section 127 of the *Act* – The Public Interest

[66] Section 127 of the *Act* operates in two ways. It specifies the sanctions available for breaches of specific sections of the *Act*. It also provides the discretion to the Commission to order some, but not all, of the sanctions enumerated in the subsections, in the event it finds the conduct that has been established to be contrary to the public interest. The words "contrary to the public interest" is a discretionary concept to be applied only when the objectives of the *Act* have been abused. It is not a substitute for a near miss of an essential element of a breach of a section of the *Act*. If a required element of an allegation of a breach of a specific section fails to be established, the allegation must be dismissed. But, if the conduct in issue, reviewed on its own, is contrary to the animating principles of the *Act* and harms investors or abuses confidence in the capital markets, the Commission may make a finding that the conduct is not in the public interest (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* [2001] 2 S.C.R. 132 at paras. 41-42; *Donald*, *supra* at paras. 323).

[67] The purposes of the *Act* are to provide protection to investors from unfair, improper or fraudulent practices and foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the *Act*). Subsection 2.1 of the *Act* details fundamental principles for the Commission to consider in addressing the *Act*'s purposes: i) requirements for timely, accurate and efficient disclosure of information; ii) restrictions on fraudulent and unfair market practices and iii) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

V. THE TELEPHONE COMMUNICATIONS

[68] Staff's allegations rely on telephone communications between Finkelstein and Azeff, between Azeff and LK, between LK and Miller, between Azeff and HG and/or between Bobrow and HF. The available phone records were entered to demonstrate the frequency and volume of the conversations between the participants, numbering in the thousands in the relevant period between 2004 and 2007. In many, but not all instances, the telephone records reveal the proximity of conversations to the start of trading.

[69] The initiation of the alleged tipping for each of the six transactions is one or more telephone conversations between Finkelstein and Azeff in the days before trading in the impugned stock occurred and within a relatively short time before the public announcement of the takeover transaction.

[70] There are four categories of available telephone records.

A. Home Phone Records

[71] For the relevant periods from November 2004 to December 2007, outgoing long distance calls from Finkelstein's and Azeff's home phones are captured. From Finkelstein's home phone records, the minimum call duration is recorded as one minute. From Azeff's home phone records, the minimum call duration is recorded as 30 seconds. This means that if the recorded call duration for Finkelstein's home phone was one minute and for Azeff's home phone was 30 seconds, it is possible that no person-to-person contact was made. The evidence was that Azeff and Kim (Finkelstein's wife) were more outgoing than their spouses and that they were most often the organizers of social gatherings, arranged get-togethers in Montreal and Toronto and planned vacations for the two families. Thus all home-to-home phone calls cannot be assumed to be between Finkelstein and Azeff.

B. Cell Phone Records

[72] Cell phone records of Finkelstein and of Azeff, capturing both outgoing local and long distance records, were made exhibits. The minimum billing period for Finkelstein's cell phone was one minute, while that of Azeff, up to May 2005, also had a minimum one minute billing cycle. In May 2005, Azeff's new phone plan recorded per second billing.

C. Davies' Phone Records

[73] Davies' phone records were not enlightening. They captured outgoing long distance calls billed to a client file, but not toll-free calls. In none of the years were any outgoing calls from Finkelstein's work line to Azeff captured in the Davies' phone records, with one exception on July 10, 2007. This was due to toll free dialing from Davies' Toronto office. These calls were captured as incoming calls on CIBC's phone records, but only after November 2006.

D. CIBC Phone Records

[74] CIBC phone records were only available from November 2006. They showed the calls from and to the extensions used by Azeff, Bobrow and Irene S, the assistant to Azeff and Bobrow.

[75] As previously noted, there were thousands of phone calls to and from Azeff's and Bobrow's extension to family, friends and clients in 2007.

[76] More importantly, what was established from all available phone records was that there were, in total, 20 phone calls between Finkelstein and Azeff in 2004, 43 calls in 2005, and 190 calls in 2007. The records for the years 2004 and 2005 probably under-record the true number of calls because office-to-office calls were not captured. Finkelstein and Azeff did not suggest that the frequency of telephone contact increased dramatically between 2004 and 2007.

E. Calls with LK

[77] One other series of calls bears mention. In 2007, there were 1112 calls between LK and CIBC. Of those, 635 calls were with Azeff, 63 calls were with Bobrow, and 414 calls were with Irene S., Azeff and Bobrow's personal assistant. LK was Azeff's accountant, a good friend, and a person who was very interested in the stock market. Calls between the two friends in prior years are not captured. What is remarkable, is that LK and his family bought a significant number of shares in each and every one of the target companies shortly before the public announcement. Yet, few of these shares was bought through a CIBC brokerage account managed by Azeff and Bobrow.

VI. FINKELSTEIN'S CASH DEPOSITS

[78] Staff's allegations included four instances when Finkelstein deposited cash into his bank accounts: $6,300 between January 27 and 30, 2005; $6,100 on each of September 9, 2005 and December 2, 2005; and a total of $24,350 from May 1 to May 5, 2007. Each deposit occurred after the public announcement of one of the six impugned transactions and within days of a meeting between Finkelstein and Azeff in Toronto or of an opportunity for a meeting in Montreal. If proven, some motive would have been established.

[79] Finkelstein responded fully to this allegation pointing out that he followed his father's practice of keeping cash at home as a means of protecting his savings. The cash, he testified, was from his own income or cash given to him by family and friends on the occasions of his marriage and the birth of his two children and that none of the cash came from Azeff. His deposits into his bank accounts were to insure that monies were available for installment payments of tax or for mortgage payments.

[80] As strange as Finkelstein's cash habits of keeping $25,000 - $30,000 around the house in tin boxes and depositing cash into and withdrawing cash from his bank account, from time to time may seem, there can be no reason to disbelieve Finkelstein on his explanations and accounting. Staff did not ask any relevant questions of Finkelstein regarding the cash allegations in cross-examination and the salutary rule of *Browne v. Dunne* ((1894), 6 R. 67 (H.L.)) makes it justifiably unfair to doubt Finkelstein's account. Furthermore, there was no evidence of cash withdrawals from Azeff's account or any monies from any other source. We cannot accept Staff's submissions regarding the relevance of the cash deposits.

VII. FINKELSTEIN'S KNOWLEDGE OF MATERIAL FACTS

[81] In this case, for reasons discussed below, we find that Finkelstein had knowledge of material facts in respect of the six takeover transactions alleged. He had the direct knowledge in three transactions, Masonite International Corporation ("**Masonite**" or "**MHM**"), Legacy Hotels REIT ("**Legacy**") and IPC US REIT ("**IPC**") because he was a lawyer involved in the transaction and knew of the decision to acquire the target, when it was made, and had continuing knowledge of materials facts throughout the pendency of the transaction leading to the public announcement. With respect to these transactions Finkelstein was in a special relationship with the issuer pursuant to subsection 76(5)(b) of the *Act*.

[82] In the three other transactions, MDSI Mobile Data Solutions Inc. ("**MDSI**"), Placer Dome Inc. ("**Placer**") and Dynatec Corporation ("**Dynatec**"), for reasons discussed below, we find that Finkelstein had knowledge of the decision to acquire the target because, although he was not involved as the Davies lawyer working on the transaction, he accessed deal documents between the time of the decision to acquire and the public announcement. We find that Finkelstein had material non-public information only from the time of that access. With respect to these transactions Finkelstein was in a special relationship with the issuer pursuant to subsection 76(5)(c) and (e) of the *Act*.

[83] With respect to the latter three transactions, Staff asks us to find that the knowledge of Davies can be imputed to Finkelstein from the time when Davies was engaged to advise one of the parties to the transaction. We decline to do so as it would involve speculation that Finkelstein knew about Davies' involvement in every takeover transaction through office chatter or some other unspecified means.

[84] As we address each of the transactions we shall identify the material fact(s) and when Finkelstein acquired knowledge of them.

VIII. MASONITE

A. Overview of the Transaction

[85] Masonite was a building products company with corporate offices in Ontario and Florida. Its main products were doors and door components. It had operations in more than 16 countries and 50,000 employees worldwide. MHM traded on the TSX and NYSE. It was a reporting issuer in Ontario during the relevant period from November 2004 until April 2005.

[86] There were a number of discussions, beginning in November 2003, between Kohlberg Kravis Roberts & Co. ("**KKR**"), a U.S. private equity firm, and MHM regarding a potential takeover. Those discussions were sporadic until July 2004 when they became more serious.

[87] In July 2004, KKR discussed with management of MHM a possible acquisition of MHM and indicated a preliminary valuation of C$40-42 per common share. These discussions were not publically disclosed as there was no certainty at that time that the acquisition would proceed. At that time, the shares were trading on the TSX at approximately $31 to $34.

[88] In August and September, discussions continued between KKR and Masonite. Masonite's Board authorized management to provide certain financial information to KKR and further details were discussed including the structure of the deal.

[89] On October 4, 2004, representatives of Masonite, KKR and Scotia Capital met at Masonite's research facility in Illinois for the purpose of KKR conducting due diligence.

[90] On October 20, 2004, management of Masonite discussed with their Board the financial models that had been provided to KKR. Mr. Orsino, CEO and President of Masonite, indicated to the Board that KKR continued to present a preliminary value indication, subject to further due diligence, of C$40-42. The Board authorized Orsino to continue discussions with KKR and provide the necessary due diligence information.

[91] The deal was publicly announced on December 22, 2004 in a press release issued by Masonite, stating that it had entered into a definitive agreement to be acquired by an affiliate of KKR in an all cash transaction at C$40.20 per share. This was a premium of approximately 20% to the market price on November 16, 2004.

B. The Allegations

[92] Staff alleges that Finkelstein, while in a special relationship with Masonite, informed Azeff of undisclosed material facts regarding Masonite, contrary to subsection 76(2) of the *Act*.

[93] Staff alleges that Azeff, while in possession of material undisclosed facts:

(a) traded Masonite securities on behalf of himself and his wife between November 19 and December 22, 2004 contrary to subsection 76(1) of the *Act*;

(b) recommended investing in Masonite to family members, clients and friends contrary to the public interest; and

(c) informed Bobrow and at least one client, LK, of the material facts related to the Masonite transaction contrary to subsection 76(2) of the *Act*.

[94] Staff alleges that Bobrow, while in possession of material undisclosed facts:

(a) traded in shares of Masonite between November 19 and December 22, 2004 contrary to subsection 76(1) of the *Act*;

(b) recommended investing in shares of Masonite to family members, clients and friends contrary to the public interest; and

(c) informed at least one client, HF, of the material undisclosed facts regarding the Masonite transaction contrary to subsection 76(2) of the *Act*.

[95] Staff alleges that Miller received the material undisclosed facts from LK and that, while in possession of material undisclosed information, he:

(a) purchased Masonite securities on behalf of himself and his wife between November 22 and December 22, 2004, contrary to subsection 76(1) of the *Act*;

(b) recommended investing in the shares of Masonite to family members, friends and clients contrary to the public interest; and

(c) tipped Cheng and at least one client, DW, of the material undisclosed facts regarding the Masonite transaction contrary to subsection 76(2) of the *Act*.

[96] Staff alleges that Cheng received the material undisclosed facts from Miller and that, while in possession of material undisclosed information, he:

(a) purchased Masonite securities on behalf of his wife and his brother between November 29 and December 22, 2004, contrary to subsection 76(1) of the *Act*;

(b) recommended investing in the shares of Masonite to family members and clients contrary to the public interest; and

(c) tipped at least one client, SK, and a potential client of the material undisclosed facts regarding the Masonite transaction contrary to subsection 76(2) of the *Act*.

C. Material Facts

[97] Masonite was a long standing client of Davies. Finkelstein began working on MHM matters early in his career at Davies. He was counsel to MHM on its acquisitions, had primary responsibility for negotiating and documenting its banking and credit agreements and generally providing corporate advice to MHM. Finkelstein knew and communicated with the principal officers of MHM including Ulster, Ambruz, Tubbesing and Bernards.

[98] In July 2004, Finkelstein advised MHM to cease purchasing shares under its Normal Course Issuer Bid because he determined that the possibility of an acquisition was a material fact that MHM should not take advantage of to the potential unfairness of selling shareholders.

[99] In the period from August to November 16, 2004, Finkelstein, on the instructions of his client, MHM:

(a) reviewed the compensation arrangements that the senior officers of MHM had with the company to ensure that their options or deferred shares vested in the event of a change of control;

(b) reviewed a pre-existing 2003 Standstill Agreement to ensure that its terms were still appropriate to protect MHM when it made available its confidential data to KKR; and

(c) assembled all of MHM's credit agreements for review by KKR.

[100] We are satisfied that, from July to November 15, 2004, Finkelstein was well aware of the increasing likelihood of KKR acquiring MHM. His legal services and the reasons for his services point only in that direction and to that conclusion.

[101] Then, on November 16, MHM called a meeting to be held quickly with its Davies' lawyers. This meeting was unlike previous telephone discussions with Davies' lawyers in that three executives of MHM attended at the Davies' offices and two senior Davies' partners, Gula and Connelly also attended, as well as Finkelstein. The number and seniority of people in attendance, in person, denoted an important meeting.

[102] At the hearing, Connelly described the meeting:

> A. Well, that was the, so far as I'm aware, the first – the prime organizational meeting that signalled to me that this transaction was for real because the client said we need to meet fast and we met fast. And that was because something that had been floating around in the air for a long period of time appeared suddenly to be real. The client needed legal advice about it.

[103] Finkelstein, on the other hand, described the meeting as routine:

> I don't really characterize that meeting as being all that material. It was just another preliminary meeting that we were having, similar to the work that I'd been doing up to that date in preparing and answering questions from management regarding a possible transaction with KKR.
>
> […]
>
> I believe what I had said the other day was I viewed this as more yet another internal matter that we were trying to address with the individuals, Harley and John. They had asked a question about 61501 [*sic*], in particular about the collateral benefits, because the deal they were considering obviously had some of those issues to consider, and I didn't view it as anything other than simply another means to get to the end.

[104] We prefer the evidence of Connelly with respect to his recollection of the importance of the meeting (See: *Springer v. Aird & Berlis LLP* (2009), 96 O.R. (3d) 325 (Sup. Ct. J.) at para. 14). Beginning on November 16, the docket entries by the Davies' lawyers are recorded as Project Crystal, a pseudonym used to provide greater confidentiality to a pending transaction. Previously, all legal services rendered were recorded on a MHM titled file. Connelly did not habitually perform legal services for MHM and thus this particular meeting that he was invited to attend with Gula, another senior partner at Davies, made an impression on him and sticks out in his memory. A review of the dockets immediately after the November 16 meeting shows significant legal activity and services rendered, consistent with a decision by KKR and MHM to proceed. Of particular note was the significant investigation of OSC Rule 61-501 to determine the consequences flowing from MHM executives receiving collateral benefits from a takeover by KKR.

[105] We conclude that, at a minimum, on November 16, 2004, the lawyers at Davies, including Finkelstein, knew that KKR would be proceeding with a friendly takeover transaction of MHM and that MHM was willing to be bought out. Finkelstein's knowledge of the decision by KKR to proceed to acquire MHM and MHM's acceptance of the proposal is a material fact. Further, this probable acquisition, if disclosed, would reasonably be expected to have a significant effect on the market price or value of MHM shares. The vast majority of takeover transactions are at a premium to market price of a security and further increase the value of the security. As a result, the premium on the transaction announced publicly on December 22 was approximately 20% increase to the market price on November 16. By November 16, Finkelstein was in possession of that undisclosed material fact.

1. Staff's Submissions on Additional Material Facts

[106] Staff submits that, by November 16, Finkelstein also knew that the takeover consideration was to be cash, at around Cdn. $40 per share and that the transaction would take place within a relatively compressed period of time.

[107] In July, in discussions with MHM, KKR indicated a preliminary valuation of Cdn. $40-42 per share. At a MHM Board Meeting, in October 2004, the President of MHM indicated to the Board that the value of Cdn. $40-42 was still the range. Staff also pointed to passages from Finkelstein's compelled testimony in 2010 wherein Finkelstein acknowledges that "we were told that there was a range of prices that was at least preliminarily acceptable to the company to move forward on" and "I believe they had a price in mind, that $40 was their threshold, their minimum that they were looking for, and that there was enough of an indication that […] there was enough to proceed to start to work on a deal".

[108] Staff pointed back to Finkelstein's ceasing of the Normal Course Issuer Bid in July, his review of the change of control provisions in August, his assembly of the credit agreements in early November, all services rendered by Finkelstein, and implied that it is unlikely that he would have done all this work and never asked or been told of the indicative price of Cdn. $40 per share, particularly as he had known and interacted with the principals of MHM for more than a year.

[109] Staff then pointed forward in time to emails from Miller to a client and a lawyer, DW on November 24 between 15:17 and 17:22 in the following sequence:

> Miller: "Call me I have a tip"
>
> DW: "i'll take your tip. you've steered me right in the past. Just let me know what you are buying/selling/shorting so I can clear it hear [*sic*] first."
>
> Miller: "Stock trades on TSX at around $34 – cash takeover at $40 Timing should be before xmas but you never know with lawyers […] I'm long"

DW: “what's the name of the issuer?”

Miller: “Masonite - MHM”

[110] The respondent, Miller, an investment adviser with TD in Toronto, first became interested in MHM as a result of a telephone call from LK in Montreal. LK learned of MHM which was recommended to him by Azeff. On November 22, LK made his first purchase of 800 shares of MHM for $27,255 online at 14:54 and his second purchase of 1,000 shares of MHM for $33,920 online at 15:45. Four minutes after that, at 15:49, Miller bought 600 shares for his own account for $20,325.

[111] The emails, two days later, contain the almost precise details of the transaction publicly announced on December 22. It was a takeover, the consideration was cash and it was at Cdn. $40.20 per share.

[112] A further email from Cheng, Miller’s close associate at TD on December 7, 2004, further supports Staff’s contention. In his compelled testimony, Cheng admitted that he learned of MHM only from Miller. He acknowledged that the content of his email came from Miller. The email is written to a client, SK, who had previously made a complaint to TD about Cheng regarding some of her investments. Cheng had been away in China and, upon his return, wrote to SK: “I'm back in town and would like to talk to you about your account. Kindly contact me at your convenience. I'm buying MHM on Toronto Exchange for clients and 20% return is expected before Christmas. I'm looking forward to seeing you soon.”

2. Finkelstein’s Submissions on the Additional Material Facts

[113] To the contrary, Finkelstein was emphatic that he did not know of the transaction price until November 24. Connelly’s testimony was consistent with Finkelstein’s testimony that he was unable to find any evidence in the written records at Davies that the lawyers had been aware of any pricing information before November 24. He, himself, did not recollect price being discussed at the November 16 meeting.

[114] Finkelstein relied on a passage from the “Background to and Fairness of the Arrangement” in MHM’s management information circular which for the date of November 24, 2004 indicates that “KKR was proposing a value of C$39 […] per Common Share”. This passage is not very informative since, in the same section, for the date of October 20, 2004, management writes “KKR continued to discuss a preliminary valuation indication, subject to further due diligence, for the Company’s shares in the range of C$40 to C$42”.

[115] Finkelstein also relied on a letter written on October 23, 2014, after the start of the hearing, by Ambruz, the Executive Vice President of Strategic Development of MHM at the relevant time, to the effect that he did not believe that any potential pricing or timing of the proposed transaction was made known to the Davies lawyers until after an MHM Board Meeting on November 24. We accord this letter very little weight. It was written ten years after the event, after the hearing had commenced. It provided no insight into what documents or review Ambruz made to refresh his memory of the series of events leading up to the closing of the transaction. It gives no indication why Ambruz remembered that, although MHM knew the $40 range from July 30, 2004 onward, the company lawyers were not told of the pricing until November 24. Finally, as to the timing of the transaction, the letter is inconsistent in this regard with Connelly’s evidence who says he understood on November 16 that the client wanted to proceed quickly.

3. Conclusions on the Additional Material Facts

[116] On a balance of probabilities, we conclude that Finkelstein not only knew on November 16 that the acquirer and target had agreed to a transaction, but also that it was priced at approximately Cdn. $40 per MHM share, that it was to be paid for in cash and to be completed, quickly, likely by Christmas. KKR and Masonite’s decision to proceed with a take-over transaction, alone, was a material fact. The price of $40 per share had been discussed between KKR and MHM since July 2004. It was discussed with the MHM Board of Directors in October 2004. Finkelstein had rendered four specific services to MHM related specifically and only to a potential takeover bid by KKR between August and November 16. The only evidence presented for the source of the specific details contained in Miller’s email to DW is LK who, in turn, admitted to receiving MHM information from Azeff. From all these facts we infer that Finkelstein knew, on November 16, the pricing, structure and timing of the transaction.

[117] The pricing, consideration and timing, together with the takeover decision, are also material facts (the “**MHM Material Facts**”; *YBM*, *supra* at para. 94). We find that Finkelstein knew these material facts and that the material facts were not generally disclosed until the public announcement of December 22, 2004.

D. The Evidence of Tipping and Trading

[118] For the period from July to December 2004, there were no available phone records between Davies and Azeff or Bobrow’s extension at CIBC. Toll free calls between Davies and CIBC were not recorded.

[119] Finkelstein testified that, in 2004, he used text messaging, but could not recall whether he ever texted Azeff. Those communications are also unavailable.

[120] What is known is that, on July 9, there was a call from Finkelstein's cell to Azeff's home for a duration of two minutes. This call was probably with regard to the birth of Finkelstein's son, born on July 8, 2004. In mid-August 2004, Finkelstein attended Azeff's wedding in Montreal and was part of the wedding party.

[121] The next recorded telephone call occurred on November 17. No one suggested, nor was it likely, that there were no calls between Finkelstein and Azeff in the period between July 9 and November 17. Given that there were 43 recorded calls in 2005 and 190 in 2007 and no suggestion that there was a dramatic increase in the frequency of calls between the two friends between 2004 to 2007, we find that it is probable that there were unrecorded calls from office-to-office or text messages from Finkelstein to Azeff and vice-versa in the months of September to December 2004.

[122] Although Finkelstein was a client of Azeff and had a brokerage account with him, there was not a lot of discussion between them regarding investments, as the account was a small one, between $80,000-$100,000, and Finkelstein was known affectionately by Azeff as "Mitch Restricted" because of his position and work at Davies. We note that both Finkelstein and Azeff testified that Azeff never recommended or even discussed with Finkelstein the purchase of any of the shares of the six target companies, which he recommended to his other clients. This may have been because Azeff knew Davies was the law firm involved in some aspect of the transaction or because none of the shares recommended to other clients was suitable for Finkelstein's modest portfolio.

[123] On Wednesday, November 17, there were four attempts by Azeff to call Finkelstein:

7:25 Azeff (home) to Finkelstein (cell) – 30 seconds

7:26 Azeff (home) to Finkelstein (cell) – 30 seconds

8:09 Azeff (home) to Finkelstein (cell) – 30 seconds

8:13 Azeff (home) to Finkelstein (cell) – 36 seconds

Although the last call of 36 seconds would normally indicate some discussion, there is no incoming call shown on Finkelstein's cell bill, which makes it likely that there was no contact.

[124] Finkelstein had no recollection of this 36 second call. Azeff testified that he was trying to reach Finkelstein to find out what colour Finkelstein's wife, Kim, would want the frame to be of a children's painting that his wife, Oana, had painted for Finkelstein's second child, born on July 8, 2004. The painting was to be a surprise for Kim. Azeff stated that was why he was calling Finkelstein.

[125] On Friday, November 19 at 7:20, Azeff, from home, called Finkelstein's home, a call that lasted four minutes and 48 seconds. Finkelstein's evidence was that he was most probably not at home at that time, as it was his practice to leave the house before his children awoke. Also, on reviewing his dockets, he noted that he docketed 9.1 billable hours that day and was additionally involved in significant non-billable work related to Davies' Evaluations Committee. Being a Friday, he would typically try to be home by dinner time to observe the Sabbath. Thus, to accomplish all that he would have to leave home before 7:00.

[126] Azeff's testimony was that he spoke to Finkelstein's wife Kim about the best colour for the picture frame. He apparently decided to call her when he failed to reach Finkelstein and abandoned the attempt at surprising her. Kim did not testify. There is no corroboration for Azeff's testimony on this point.

[127] On Friday, November 19, commencing at 9:24, Azeff and Bobrow began placing orders to buy shares of MHM on the TSX. By 10:55, Azeff and Bobrow had bought 10,100 shares at a value of $346,450 for their parents, siblings, themselves and some clients, all through their DK4 trading code. By the end of that day, Azeff and Bobrow had bought 33,150 shares for a value of $1,134,578 through the DK4 accounts representing approximately 48% of the total trading of MHM on the TSX.

[128] None of the accounts for whom they bought shares had bought MHM shares in the previous six months. Essentially, this was a new core position for Azeff and Bobrow, their family members and clients.

[129] On Monday, November 22, Azeff and Bobrow bought a further 31,235 shares of MHM through their DK4 code for $1,064,069, representing approximately 19% of the shares of MHM traded on the TSX.

[130] Between November 19 and December 22, the date of the public announcement of the takeover transaction of MHM by KKR, Azeff and Bobrow had purchased 293,360 shares of MHM for more than 100 accounts through the DK4 code for a value of $9,950,520.

[131] Staff alleges that Azeff tipped LK, who then purchased shares of MHM. LK, in turn, tipped Miller.

[132] LK is Azeff's accountant, lives in Montreal, and is a good friend of Azeff. This fact is borne out by the fact that, although not a significant investment client of Azeff, there were 1112 calls in 2007 between Azeff's office and LK in 2007 (when phone records by CIBC extension were available): 635 calls were with Azeff; 63 with Bobrow; and 414 with Irene S., Azeff and Bobrow's personal assistant.

[133] LK acknowledged, in his testimony, that the idea of purchasing MHM came from Azeff. Azeff mentioned to him that MHM was "in play". In his words, "in play" could mean a takeover. He also thought that it had something to do with a private equity player. He recalled something about 20% and some general discussion with Azeff and/or HG about premiums. He was under the impression that Azeff was confident about his recommendation. He did not discuss a source with Azeff and did not ask Azeff about his source.

[134] On November 22 at 14:54, relying on his conversation with Azeff, LK purchased, for the first time, 800 shares of MHM, online for $27,255 through TD. Less than an hour later, at 15:45, he bought a further 1,000 shares online through TD for $33,920.

[135] Four minutes later, at 15:49, Miller, an investment adviser at TD in Toronto, made a first purchase of 600 MHM shares for $20,325.

[136] Miller acknowledged that he first heard of MHM on a phone call from LK from Montreal. Neither Miller nor LK could remember when that phone call occurred. But since the chain of information regarding MHM came from Azeff to LK to Miller, the telephone call must have been between Friday, November 19 and Monday, November 22.

[137] LK and Miller met approximately 30 years ago when they played on the same softball team in Montreal. Thereafter, they lost touch for a number of years when Miller moved to Toronto. They reconnected by happenstance when, in 2002 or 2003, they ended up sitting on a beach beside each other. They spoke fairly frequently between 2004 and 2007. LK provided some accounting or tax advice, as a friend, to Miller and Miller provided investment advice or comments on the stock market to LK.

[138] LK confirmed that he told Miller about MHM. He testified that he spoke with Miller after he spoke with Azeff. LK recalled that his discussion included telling Miller that he thought the company was "in play", that likely private equity funds were interested, that they had cash as consideration, that a 20% premium was possible and that there was pressure to do a deal before the upcoming holidays began.

[139] Miller did not testify at the hearing. His evidence was introduced by excerpts of his compelled testimony taken in August and September 2009. When shown his email of November 24, 2004, with the elements of the transaction: Stock trades on TSX at around $34, cash takeover at $40, and timing before Christmas, he acknowledged that the reference was to Masonite and that a cash takeover of $40 was discussed with LK. He said that the phrase "Timing should be before xmas" was information provided by LK.

[140] Any ambiguity arising from Miller's compelled testimony or the context in which it was given, could have been, but was not, explained by him. We therefore gave it a literal interpretation and one that was consistent with LK's account of the discussion with Miller.

[141] In addition to the 600 shares of MHM he purchased on November 22, Miller bought a further 2,400 between November 23 and November 29. The total of 3,000 shares for a cost of $102,265 was his largest position at the time.

[142] Miller also bought 4,300 shares for his wife Heidi-Lynn at a cost of $145,738 and a further 3,300 shares for other family members for $113,104.

[143] Miller recommended the purchase of MHM shares to clients and their families, who bought a total of 46,100 shares for $1,577,978.

[144] Francis Cheng, Miller's colleague and mentee was away in Asia from November 20 to November 29. Nevertheless, Miller told him about MHM:

> Q. Did you share the information that you obtained from [LK] with Francis?
>
> A. Yes.

[145] On November 29, Cheng started buying MHM shares, at first for his wife, then for his brother in Hong Kong, other family members and clients. The MHM shares purchased for Cheng's wife accounted for 98% of the value of her portfolio at the

end of November 2004. In total, the five accounts of the Cheng family purchased 9,100 shares for $308,789 and Cheng clients purchased, on recommendation from Cheng, a further 4,100 shares of MHM for $139,372.

[146] On December 7, Cheng sent an email to SK, a client who had previously complained about Cheng's investments on her behalf: "I'm back in town and would like to talk to you about your account. Kindly contact me at your convenience. I'm buying MHM on Toronto Exchange for clients and 20% return is expected before Christmas. I'm looking forward to seeing you soon."

[147] Cheng also elected not to testify, even though he attended the hearing. His compelled testimony was admitted in the record. In it, he admitted that the specific information in the email came from Miller. He said he heard from Miller that the takeover would be before Christmas and that there would be a 20% premium to the current stock price.

[148] On the next day, Cheng sent another email to a person in Chicago whom he had recently met while standing in a ferry line for a trip from Hong Kong to Macau:

> Take a look at MHM […] listed on the Toronto Stock Exchange. It's a takeover target and I was told that it'll be done at Cdn$40.00 before Christmas. It's currently trading at Cdn$34.00 and I don't see much downside from here even if the deal ended up falling through.

[149] Staff also alleges that Bobrow tipped a close friend and client, HF.

[150] Bobrow had a good friend and client, HF, with an investment portfolio of approximately $5 million. HF also had a trading account at Scotia McLeod. HF is a lawyer and accountant and a sophisticated investor who described his trading as a combination of short-term, speculative and long-term investments. By 2004, HF had been a client of Bobrow for approximately ten years. They began a friendship in the mid-nineties and became very close friends. HF attended Bobrow's destination wedding in 2004. By 2004, HF had become an important client with whom Bobrow spoke frequently, often a few times a day.

[151] HF began dating his current wife BR in 2003. She did not have a trading account with Bobrow.

[152] On November 29, 2004, while HF was in Boca Raton, Florida, he emailed Bobrow at 7:48:

> Good morning. In boca, as you know. Cell is spotty here. In meetings all day so can't chat much. Will call when I can. You can try me for any major developments. You should try to email me. It may work better. Send back directly to my rim. Talk later. Ciao. H.

[153] He then instructed Bobrow three times by text message to buy 1,000 shares of MHM at increasing prices below the market.

[154] At 8:18, BR, HF's fiancée, sent Bobrow an email: "Hi Kory, I have a chq to send you this am. Please email me your address. Thanks."

[155] At 8:55, Bobrow replied "Hi B---, the address is 1 Place Ville Marie, Suite 4125, Montreal, Qc H3B 3P9. What account is it going into?"

[156] At 10:54, BR emailed Bobrow "Did you receive my cheque?".

[157] At 10:56, Bobrow replied "Yes, thanks, and we are filled on 900 of 1,000".

[158] At 11:03, BR asked "What is the symbol … so I can follow it".

[159] Three minutes later, at 11:06, Bobrow emailed HF "Does B— know what she's buying, she's asking for the symbol".

[160] At 11:15, HF replied to Bobrow "No. Don't tell. Confidential."

[161] At 11:17, Bobrow responded "r u kidding or serious?"

[162] At 11:24, HF replied to Bobrow: "I haven't told anyone. Tell her I will tell her later. We don't want this info in the public domain".

[163] At 11:25, Bobrow then emailed BR "H will call you later".

[164] Staff points to the purchase of the 1,000 shares by HF either for himself or on behalf of BR and the email chain to support its claim that Bobrow tipped HF with MNPI.

E. The Respondents' Evidence

1. Finkelstein

[165] Finkelstein emphatically denied that he ever discussed any transaction with Azeff or passed MNPI to him. Finkelstein was a very intelligent young partner at Davies in 2004 with a bright future ahead of him. His colleagues and clients thought highly of him. He was committed to his professional work recording 1861 billable hours in 2004 and 2442 hours in 2007. In addition, he logged a significant number of non-billable hours involved in firm committees and administration.

[166] His nature was described to be conservative and introverted. By contrast, Finkelstein stated his wife was much more social and extroverted. She was the one who arranged social get-togethers with friends and family. She made travel and holiday arrangements.

[167] Finkelstein introduced his wife to Azeff, before he and Kim were married in September 2000. Azeff was part of Finkelstein's wedding party. Azeff and Kim became good friends and chatted by phone, fairly regularly in the period between 2004 and 2007. These calls were from home to home as Kim worked from the house while her children were young.

[168] Finkelstein contends that there was no motive for him to pass MNPI to Azeff. In 2004, Finkelstein's household income was $464,000 with every indication that it would continue to rise. And it did, year by year, reaching $876,000 in 2007. He submits that he would not jeopardise a promising career.

2. Azeff and Bobrow

[169] Azeff and Bobrow claim that they had decided to build a core position in a manufacturer-wholesaler and that is why MHM stock was bought for more than 100 accounts. They point to the content of their "reasonable basis file" to demonstrate their intention to build a core position, their assembly of analysts' reports and their due diligence on MHM. CIBC requires every broker to have a reasonable basis file containing evidence of research before recommending a stock, as a safeguard against a client claim based on an unfavourable outcome.

[170] Most of Azeff and Bobrow's reasonable basis file consists of analysts' reports of October 20 and 21, 2004 reviewing MHM's third quarter results and the forward prospect for the company itself. The file included reports by Merrill Lynch, CIBC and Motley Fool of October 20 and 21 and by National Bank Financial of November 15. The reports reflected the positive results of MHM particularly for the third quarter. They all rated the stock as a sector performer and noted that its stock price was better value than its peers. Some reports had a buy recommendation, others remained neutral. They gave a one year to 18 month target of a rise in the stock price of 10 to 20%.

[171] Azeff and Bobrow also pointed to a Bloomberg technical chart for MHM in U.S. dollars. The chart indicated that on November 4, 2004 there was a golden cross, whereby the 50 day moving average of MHM stock crossed the 200 day moving average. A golden cross is considered by technical analysts to be a strong buying signal. When asked why they waited to start buying MHM until November 19, they said that they were waiting, in part, for the Canadian golden cross, which the technical charts indicated was in progress, but which did not occur until after the buying on November 19, 22 and 25.

[172] Azeff also said that by November 15, there had been four significantly destructive hurricanes in the USA and he was waiting to see if there would be another hurricane before the end of the season. Hurricanes meant more need for doors and door assemblies; thus higher sales and revenue for MHM.

[173] Azeff flatly denied that they were told of any MNPI by Finkelstein including any information that KKR was going to acquire MHM, or the probable price, or the timing before Christmas. Bobrow also denied that Azeff told him, that he had received MNPI from Finkelstein.

[174] Bobrow pointed to the sale of 400 shares of MHM from his mother's account on November 29 as being inconsistent with knowledge of a takeover of MHM. If he knew a takeover was likely and imminent, why would he sell 400 shares, shares he had bought on margin ten days earlier?

[175] Bobrow also disputes that the email exchange he had with HF and his fiancée, BR, denotes knowledge of MNPI or that he tipped HF. He says that there is an innocent explanation: it being that HF is a private person and he feared that BR would discuss HF's purchase of MHM with others. Apparently BR was known to be quite open and expansive in her conversations with friends. HF corroborated Bobrow's testimony with the exception of one aspect, i.e. that Bobrow stated he believed he was buying the shares for HF. HF intended that the shares be bought for BR in his account.

[176] LK acknowledged that he was told of MHM by Azeff and bought shares online shortly thereafter. He said that, although they may have discussed that the company was "in play", that didn't necessarily mean a takeover. He also pointed to the fact

that, although he bought 1,800 shares on November 22, he sold 1,000 shares on November 26, a sale he would not have made had he known that there was a takeover bid.

3. Miller

[177] Miller, who didn't testify at the hearing, said he bought MHM shares because LK told him there was a buzz about MHM in Montreal. He was certain that he did some research on MHM before buying, but could not remember any in particular or produce any. He says that he and LK speculated about the price and timing of the potential transaction and that he and LK valued Masonite at about $40 per share. He says he didn't know LK's source for the information and didn't ask LK about his source.

[178] Miller submits that the magnitude of the Masonite positions was consistent with other positions held in his and his wife's accounts.

4. Cheng

[179] Cheng, who also didn't testify at the hearing, said that he bought on the information conveyed by Miller. He thought that Miller was passing on a rumour. There are always rumours in the marketplace of possible or even likely takeovers and their target price.

[180] Cheng states that there is no evidence that he knew that Miller was a person in a special relationship with Masonite.

[181] Cheng further contends that his trading was not uncharacteristic and cannot be used to support an inference of a special relationship.

F. Analysis and Conclusion

[182] We conclude that all the elements of subsections 76(1), 76(2), 76(5)(b) and 76(5)(e) of the *Act* have been established and that the respondents, Azeff, Bobrow, Miller and Cheng breached subsection 76(1) of the *Act*, that Finkelstein, Azeff, Bobrow, Miller and Cheng breached section 76(2) of the *Act* and, thereby, all have also conducted themselves contrary to the public interest. Additionally, the four registrant respondents, by recommending the purchase of MHM shares to friends, family and/or clients have acted contrary to the animating principles of the *Act*, contrary to the public interest.

[183] Finkelstein, as the commercial lawyer engaged to assist MHM to prepare for, negotiate and implement its takeover by KKR was in a special relationship with MHM and, as we have previously determined, had relevant MNPI.

[184] Finkelstein and Azeff were good, long-term friends who kept in regular touch. Azeff attended Finkelstein's wedding in 2000. Finkelstein attended Azeff's wedding in Montreal as part of Azeff's wedding party in August 2004. There were regular phone calls between the two, but since the records of work-to-work calls are unavailable, no precise dates of work-to-work communications can be determined.

[185] Finkelstein's manner of giving evidence lacked spontaneity and was well rehearsed. Often he would answer questions from his own counsel by indicating that they would be coming to that evidence later. He left the impression that his evidence was tightly controlled. The substance of his testimony ignored or touched lightly upon important elements that needed explanation. He spoke very little of his relationship and communications with Azeff in the relevant period from 2004-2007. He did not elucidate why he spoke to Azeff dozens of times annually or why there were 190 calls placed between them in 2007. He made it clear that they were not talking about his small investment portfolio. We know that Finkelstein was a busy lawyer involved in a number of significant mergers and acquisition transactions in this period. Finkelstein's testimony did not illuminate for us the reasons for, nor the nature of, the work-to-work calls particularly at and around the days and weeks leading to the impugned transactions. Accordingly, we accorded less weight to Finkelstein's subjective testimony than to the objective facts.

[186] On Friday, November 19, before the market opening, Bobrow and Azeff placed orders to buy MHM shares in significant amounts for themselves and their family members. Within one hour and a half, 10,100 shares were acquired for $346,450. By the end of that day, Azeff and Bobrow acquired 33,150 MHM shares through the DK4 code for $1,134,578 representing 48% of the volume traded on the TSX, 32.5% of the combined volume of the TSX and NYSE that day and 97% of the purchases by CIBC.

[187] On Monday, November 22, Azeff and Bobrow bought a further 31,235 shares of MHM through the DK4 accounts for $1,064,069 representing 19% of the MHM shares traded on the TSX. The buying continued until the public announcement on December 22, by which time, Azeff and Bobrow, through the DK4 code, had bought 293,360 shares for a value of $9,950,520. Shares of MHM were bought for more than 100 DK4 accounts.

[188] We find the number of clients, volume of stock and the rapid accumulation of shares to be unusual and anomalous.

[189] MHM had not been bought by Azeff and Bobrow, or any of their accounts in the previous six month period. It had never been a core position.

[190] There was no evidence of rumours in the marketplace that MHM was a takeover target.

[191] The analyst reports constituting the reasonable basis file were dated, for the most part, on October 20 and 21. Although they were encouraging about MHM's prospects, they were not acted on by Azeff and Bobrow nor did they result in significant, sustained volume of purchases or price in the marketplace. The November 15 National Bank Financial report reflected a modest target increase of approximately 6 to 7%. The U.S. golden cross buying signal reached on November 4 did not prompt Azeff and Bobrow to promptly buy any shares of MHM. The justification for a delay in buying put forward by Azeff, that he was waiting for the end of the hurricane season and/or for the Canadian golden cross, is illogical. Four very significant hurricanes had already occurred and the season didn't end until the end of November. Further hurricanes would have increased the market price of MHM. Azeff didn't wait for the Canadian golden cross to occur before he started buying MHM shares.

[192] On Monday, November 22, LK bought shares of MHM, online, based on information received from Azeff. LK is Azeff's accountant and a good friend. They are in constant, almost daily communication. LK admitted that Azeff probably told him MHM was "in play". Although much was made by the respondents that "in play" could mean a sale, an acquisition, a joint venture, etc., we interpret that "in play", in its ordinary meaning, meant that MHM was being taken over. Moreover, the use of the phrase "in play" between two sophisticated persons, followed shortly thereafter by LK's purchases of 6,200 shares for himself and his wife for a value of $206,097, which represented the largest position he took in any company up to 2004 and a significant proportion of his and his wife's investment account supports the inference that "in play" meant a takeover to him.

[193] LK telephoned Miller and very shortly after LK's second purchase i.e. four minutes later, on November 22, Miller in Toronto started purchasing for himself and then for his clients. Miller acknowledged that the MHM shares he bought were his biggest equity position at the time.

[194] Miller also acknowledged that his knowledge of MHM came only from LK, that he had not owned the stock before, that he had not followed the company and that he did not have available any research that he conducted before buying the stock.

[195] Two days later, on November 24, Miller sent an email to DW, a lawyer, "Call me I have a tip". DW replies "i'll take your tip. you've steered me right in the past." Miller then writes: "Stock trades on TSX at around $34 – cash takeover at $40 Timing should be before xmas". Miller acknowledged that he discussed and received the details for this email from LK.

[196] The details of the email are further corroborated by the email Miller's associate Cheng sends to SK on December 7: "I'm buying MHM on Toronto Exchange for clients and 20% return is expected before Christmas".

[197] We conclude that Finkelstein informed Azeff, between November 16 and 19, at least, that KKR had agreed to proceed quickly with a takeover transaction to which MHM acquiesced. Although it is not necessary to establish tipping, we also find that Finkelstein told Azeff of the pricing and structure of the transaction. The ability and opportunity for Finkelstein to communicate with Azeff was readily available and thus, we infer that there was communication between them either in the telephone call of November 17, or in a work-to-work call between November 17 and 19 or in text messages. We come to this conclusion from the sudden, voluminous buying of MHM shares by Azeff and Bobrow for themselves, their families, friends and clients, from the buying of MHM shares by Miller and Cheng with no pretence of underlying research, from the precise details of the Miller and Cheng emails, details which are borne out in the public announcement of December 22, 2004 and from the chain of admitted communication between Azeff to Bobrow and from Azeff to LK to Miller to Cheng, from Montreal to Toronto, all occurring within a few days. We infer that Finkelstein informed (tipped) Azeff with MNPI contrary to subsection 76(2) of the *Act*. On a balance of probabilities, there is no other reasonable explanation for this sequence of events.

[198] On a balance of probabilities, we find that the purchase of MHM shares by Azeff and Bobrow, Miller and Cheng, was timely trading motivated by the MNPI each of them received. We have carefully considered the evidence given by Azeff and Bobrow explaining their purchases of MHM shares but determine that it is more probable that the purchases resulted from the knowledge of undisclosed material facts they received rather than by their own research efforts. The gap in time between the analysts' reports, the U.S. golden cross and the start of purchasing is overwhelmed by the close proximity between Finkelstein's knowledge of the go-ahead of the transaction by KKR and MHM, the volume of trading and the specific information that Azeff passed on to Bobrow and LK. Azeff was in a special relationship because Azeff knew or ought to have known that Finkelstein was in a special relationship with MHM. Azeff knew that Finkelstein was a mergers and acquisitions lawyer at Davies and, from the information imparted, he knew or ought to have known that Finkelstein was in a special relationship with MHM.

[199] Bobrow, as a long-time partner of Azeff, had all the same knowledge and information as Azeff. Both acknowledged in their testimony that they shared information and clients. From Bobrow's trading of MHM beginning early November 19 we infer that Azeff informed Bobrow the MHM Material Facts that came from Finkelstein. We find that Bobrow knew or ought to have known that Azeff was in a special relationship with MHM.

[200] We find that Miller and Cheng both traded on MNPI. They gave no explanations for their purchases. They produced no research to underpin reasons why they bought MHM. These purchases were their first purchases of MHM and were the largest positions in each of their portfolios.

[201] The fact that Cheng, on behalf of his wife, purchased MHM shares constituting 98% of the value of her portfolio, in the circumstances in which these purchases were made, represents unusual trading and therefore no further analysis of prior trading is necessary. We are of the view that, given the combination of MHM being Miller's largest position at the time and the specific information he passed on to DW, an analysis of prior trading was not required to infer insider trading.

[202] The more difficult assessment of special relationship is with respect to Miller and Cheng. For a finding of breach of subsection 76(1) of the *Act* to be made against them, it must be determined that LK knew or ought to have known that the material facts he received from Azeff came from a person, namely Azeff, who himself was in a special relationship with the issuer, i.e. that Azeff knew or ought to have known that his information came from a knowledgeable person and additionally that Miller, when he received the material facts from LK, knew or ought to have known that LK was in a special relationship, i.e. that he ought to have known that the information came from a knowledgeable person.

[203] In addressing the allegation that Miller and Cheng breached subsections 76(1) and (2) of the *Act*, we must determine whether each of them was in a special relationship with MHM. We find that neither Miller nor Cheng knew that the MNPI Miller received from LK and that Cheng received from Miller came from a knowledgeable person. In determining whether each of Miller and Cheng ought reasonably to have known that the MNPI they received came from a knowledgeable person we applied the factors enumerated earlier and find as facts:

(a) LK and Miller knew each other well in 2004. They had re-established an earlier friendship in 2002 or 2003 and from then on LK and Miller spoke often by phone. Their conversations revolved around their professional activities, LK speaking and asking Miller about stocks and the market, and Miller asking for tax and accounting advice. They each respected the other's positions and expertise in their respective disciplines. They each had confidence in the information and advice given from one to the other;

(b) LK was a partner in a prominent Montreal accounting and auditing firm, a fact known to Miller. Miller would understand that LK had clients, business relationships and friends involved in transactional activities in Montreal;

(c) Miller was a senior investment adviser, with a big book of business at TD. He knew or is deemed to know the provisions of the *Act* and the prohibition on trading on MNPI. A higher standard of vigilance and inquiry must be expected from a registrant than from someone who is a retail investor;

(d) The information that Miller received from LK was detailed and very specific. It was not just that MHM was "in play". That information alone could result from a rumour. Even in that event, a licensed registrant should inquire of his tipper the source of the information. Failure to inquire is not a defence. But, in this case, LK provided Miller with details of the "in play" i.e. a takeover: that it was for $40, in cash and by X-mas. That this information was reliable is exemplified by Miller's emails to DW "Call me I have a tip" and "Stock trades on TSX at around $34 – cash takeover at $40 Timing should be before xmas"."

(e) Within a very short time, Miller bought, for himself, a significant number of shares of MHM and then for his family and for 22 accounts of clients. There is no evidence that he did any research into the company. He acted on the MNPI provided; and

(f) Cheng learned of the MHM Material Facts from Miller and subsequently purchased MHM shares.

[204] From these established facts, we conclude that Miller ought to have known that the MNPI LK gave him derived from a knowledgeable person. The relationship between the tipper and tippee, the essential details of the MHM takeover bid, the precipitous, anomalous, significant trading by Miller, the registrant, make it more probable than not that he ought reasonably to have known that LK was in a special relationship with MHM and the MHM Material Facts originated from a person in a special relationship.

[205] Cheng, too, relied on the same factual basis tipped to him by Miller, his mentor and supervisor. Cheng's email to SK underscores his reliance on the reliability of the MNPI that Miller gave him. He would not have risked passing speculative information, which may prove wrong, to an already complaining client. Cheng, too, as a registrant, failed to inquire of Miller the source of Miller's information. Cheng too did no due diligence on MHM and undertook no research. He relied entirely on the MNPI given to him by Miller and precipitously bought a large position for himself and family members of MHM, a stock neither he nor they had owned previously. On the basis of all the facts regarding Cheng, we conclude, on a balance of probabilities that he ought reasonably to have known that Miller was in a special relationship with MHM and the MHM Material Facts originated from a knowledgeable person.

[206] On November 29, Bobrow sold 400 shares he had bought for his mother. We note that the purchase of these shares on November 22 and their sale on November 29 were in a margin account which may be the explanation. In any event, Bobrow bought a further 800 shares in his mother's account after that. We do not accept that this isolated sale establishes, in light of all the other evidence, that Bobrow did not have MNPI, that he did not trade on it or tip HF with regard to it. The email exchanges with HF, his contemporaneous purchase of MHM shares and particularly the words "[w]e don't want this info in the public domain" are persuasive evidence of Bobrow tipping HF.

[207] We address the fact that LK sold 1,000 shares of the 1,800 he bought on November 22. He then resumed buying shares resulting in a final position of 6,200 shares in his own and his wife's accounts. Stacked against the specific details of the transaction which he passed on to Miller, this fact does not undermine his knowledge. We also note that in subsequent transactions alleged in the Fresh as Amended Statement of Allegations, he acted consistently, buying a lot of shares, then selling a few and resuming purchases. He was a very active trader, in his words he would "buy and sell a stock in the same day".

[208] Finally, we address the lack of motive for Finkelstein to tip his good friend Azeff with MNPI. We considered this submission by his counsel very seriously. Motive, in the form of consideration received by a tipper can form an important factor in concluding that tipping occurred. Absence of motive is not a determinative factor in favour of no tipping having occurred. The language of subsection 76(2) of the *Act* does not require that there be a motive. Weighing all the facts established, those that point to tipping, and those that point to no tipping, we are satisfied on the balance of probabilities that Finkelstein tipped Azeff.

[209] With respect to allegations relating to Masonite, we find that from November 16, 2004 to December 22, 2004:

(a) Masonite was a "reporting issuer" within the meaning of the *Act*;

(b) Finkelstein was a person in a special relationship with Masonite within the meaning of subsection 76(5)(b) of the *Act*;

(c) the MHM Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the Masonite securities and were therefore "material facts" with respect to Masonite, within the meaning of the *Act*;

(d) Finkelstein informed Azeff, Azeff informed Bobrow and LK, Bobrow informed HF, Miller informed Cheng and DW, and Cheng informed SK, other than in the necessary course of business, of the MHM Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the *Act* and contrary to the public interest;

(e) each of Azeff, Bobrow, Miller and Cheng learned of the MHM Material Facts from a person whom he knew or ought reasonably to have known was a person in a special relationship with Masonite and, as a result, were persons in a special relationship with Masonite within the meaning of subsection 76(5)(e) of the *Act*;

(f) based on the foregoing, Azeff, Bobrow, Miller and Cheng each purchased Masonite securities with knowledge of the MHM Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the *Act* and contrary to the public interest; and

(g) each of Azeff, Bobrow, Miller and Cheng acted contrary to the public interest by recommending, with knowledge of the MHM Material Facts, that a client or clients purchase Masonite securities.

IX. MDSI

A. Overview of the Transaction

[210] MDSI was a reporting issuer in Ontario and a mobile software company, with operations in North America, Europe and Australia during the period of June to August 2005. Its shares traded on the TSX and NASDAQ.

[211] On May 25, 2005, a letter of intent was signed between MDSI and Vista Equity Fund LLP ("**Vista**") for acquisition of all outstanding shares of MDSI at $8.15 per share. Davies had been retained in April by Vista to act on its behalf in the acquisition of the shares of MDSI.

[212] In June 2005, the MDSI Board retained Torys LLP as independent counsel and CIBC World markets as financial advisor to prepare a fairness opinion.

[213] On July 29, 2005, the MDSI Board met, received the fairness opinion, and approved the Arrangement Agreement.

[214] The public announcement of the takeover occurred at 13:59 on July 29, 2005 in a press release announcing that MDSI had entered into an agreement to be acquired by Vista for US$8.00 per share (cash), a premium of approximately 60% to the 10-day average closing price for MDSI on NASDAQ.

B. The Allegations

[215] Staff alleges that Finkelstein, while in a special relationship with MDSI, informed Azeff of the material undisclosed facts of the Vista/MDSI transaction. Staff also alleges that, while in possession of the material undisclosed facts, Azeff recommended investment in shares of MDSI to several friends.

C. Material Facts and Finkelstein's Knowledge

[216] Davies had been retained by Vista in April 2005 but Finkelstein was not one of the lawyers involved in the transaction.

[217] Disclosure of the MDSI transaction would reasonably be expected to have had a significant effect on the price of MDSI's shares. The material facts related to this transaction included the fact that Vista and MDSI had signed a letter of agreement for Vista to acquire all outstanding shares of MDSI at US$8.15 per share.

[218] On June 6, Finkelstein accessed the Vista – MDSI letter of intent through Davies' Document Management System ("**DMS**"). From the content of the letter of intent, Finkelstein came into possession of MNPI, being knowledge of a takeover, and was under a duty and prohibition not to disclose this information to anyone. From June 6 onward, Finkelstein was in a special relationship with the issuer.

[219] On July 18, Finkelstein accessed six documents from the Vista file code named Project Canada and on July 27, he accessed, through DMS, three documents. The documents accessed included a Timetable, an MDSI fact sheet, a Draft Agreement and a Draft Press Release announcing the proposed transaction. The documents indicated that the price to be paid by Vista for MDSI shares was 60% over the then market price and the estimated announcement date of July 27.

D. The Evidence

[220] There were a number of phone calls between Finkelstein's and Azeff's homes beginning on June 16 and culminating on July 27, two days before the public announcement of the takeover. The calls were of long duration, 22 minutes on June 16, 9 minutes on July 11, 24 minutes on July 12 and 22 minutes from 21:25 on July 27.

[221] On the following day, July 28, 2005, several friends/clients of Azeff, who had not previously owned shares of MDSI between January 2, 2004 and July 27, 2005, began purchasing shares of MDSI, although not through accounts with Azeff at CIBC under the DK4 code.

[222] On July 28, HG, a friend of Azeff, bought 16,000 shares of MDSI for a value of $80,352 through his HSBC account. HG had not owned any shares of MDSI in the six months prior to July 28.

[223] HG and Azeff have been extremely close friends since birth. HG was a client, as were a number of his family members and friends. In the relevant period 2004 to 2007, they were in frequent contact. For 2007, HG and Azeff are recorded, on the CIBC work line, as having contacted each other 409 times. That number does not include home or cell phone calls. Azeff viewed HG as being very smart, very wealthy and an expert in real estate. HG is a lawyer who, although he did not represent Azeff and Bobrow personally in this matter, oversaw their file and representation.

[224] That same day, LK bought 6,000 shares for his and his wife's account for a value of $33,952 through his TD account. He, too, had not owned MDSI shares in the previous six months.

[225] Also, on that day, DC, a friend of Azeff, bought 2,000 shares of MDSI through a non DK4 account at CIBC for $12,685.

[226] All three individuals sold their entire holdings on July 29, after the public announcement, each reaping a profit between 49.9% and 55.8%.

[227] Neither Azeff nor Bobrow bought any shares for themselves, their family members or their clients through the DK4 account.

[228] The record is replete with cell phone calls from July 20 to July 28 between Azeff and HG, Azeff and LK and LK and HG.

[229] Staff alleges that Azeff recommended to these three individuals investing in the shares of MDSI contrary to the public interest. The origin of the recommendation allegation is founded on the alleged fact that Finkelstein tipped Azeff, who in turn recommended MDSI shares to ingratiate himself with friends and clients.

E. Analysis and Conclusion

[230] The fact that neither Azeff nor Bobrow bought any shares through their DK4 accounts for themselves, their family, friends or clients, significantly undermines the receipt by them and use of MNPI. When contrasted with the buying of MHM for more than 100 accounts, the difference is stark.

[231] Further, both Connelly, a senior partner at Davies, and Finkelstein testified and demonstrated that many corporate commercial lawyers at Davies accessed documents from files in ongoing transactions for precedential value. Indeed, Finkelstein submits that in the years 2004-2007, he accessed some 8,000 documents on files he was not working on through DMS. It appears that the practice was general and not in the least restricted to Finkelstein. We are troubled by the nature and category of some of the documents accessed – Timetable and Press Release – but are not prepared to speculate.

[232] Although there are suspicious circumstances that arise from the types of documents accessed by Finkelstein, his calls with Azeff and the buying of shares by friends of Azeff, we do not find that we have clear, convincing and cogent evidence of facts from which to draw the necessary inferences that Finkelstein tipped Azeff, who used MNPI to recommend MDSI shares contrary to the public interest. We dismiss the allegation that Finkelstein tipped Azeff.

[233] The evidence of HG and LK regarding the reasons they bought MDSI is vague. We cannot and will not draw an inference unless the evidence is convincing and the inference natural and logical. The allegation that Azeff recommended the purchase of MDSI contrary to the public interest is dismissed.

X. PLACER

A. Overview of the Transaction

[234] In the fall of 2005, Placer was a reporting issuer in Ontario and a gold producer with mines around the world. Its shares were listed on the TSX and NYSE.

[235] Barrick and Goldcorp were large gold producing companies, intent on growing by acquisition. This fact was widely known. Indeed, in the years leading to the fall of 2005, there had been much consolidation in the industry. Barrick was known to be an aggressive acquirer.

[236] On Aug. 22, 2005, executives of Barrick and Goldcorp began discussions concerning a potential joint acquisition of Placer. Between Aug. 24 and mid-Sept., Barrick continued to analyze several strategic options, including the possible purchase of Placer.

[237] Davies had acted for Barrick for many years. On September 7, 2005, it opened a file, code named Project Domestic, relating to a possible acquisition of Placer. Finkelstein was not one of the lawyers assigned to this acquisition.

[238] On Sept. 14, Barrick's Board of directors instructed management to continue to evaluate Placer, among a number of strategic initiatives, but to place a greater emphasis on other strategic initiatives. Following that meeting, Barrick advised Goldcorp that it did not make sense to continue active discussions regarding a potential acquisition of Placer at that time.

[239] On Oct. 3, 2005, Barrick's joint committee of management and directors once again considered the Placer acquisition and determined that it should be explored. On Oct. 6, executives of Barrick and Goldcorp agreed to thoroughly investigate the potential of making a joint bid to acquire Placer.

[240] On Oct. 7, Barrick and Goldcorp signed a confidentiality agreement and Barrick provided Goldcorp with a draft term sheet for the transaction.

[241] Between October 13 and October 27, Barrick and Goldcorp re-engaged with their counsel, Davies and Cassels Brock and their advisers Merrill Lynch to discuss the terms of an agreement whereby Goldcorp would acquire some of the Placer assets. That agreement, the Goldcorp Agreement, was not finalized until October 29. On October 30, the Barrick Board approved the making of an offer to acquire the shares of Placer.

[242] On October 31, the offer to acquire Placer was announced whereby shareholders tendering to the offer would receive US$20.50 per share: 87% of the purchase price in Barrick shares and 13% in cash. The offer represented a premium of approximately 27% over the market price of Placer shares.

B. The Allegations

[243] Staff alleges that Finkelstein, while in a special relationship with Placer, informed Azeff of the material undisclosed facts of the transaction, contrary to subsection 76(2) of the *Act*.

[244] Staff further alleges that Azeff tipped Bobrow and both, while in a special relationship with Placer, and in possession of material undisclosed facts:

(a) traded in Placer shares, contrary to subsection 76(1) of the *Act*; and

(b) recommended the purchase of Placer shares to family members, clients and friends contrary to the public interest.

C. Analysis and Conclusion

[245] On September 14, 2005, Finkelstein accessed three documents: Joint Bid Precedent Agreements Binder Index; Binder Index Project Domestic; and a Summary of the Value of a Change of Control Under Executive Compensation Arrangements. On September 15, Finkelstein accessed a document entitled “Market Share Analysis”.

[246] On October 18, Finkelstein accessed the Target 2004 AIF which is a Placer Annual Information form for the year 2004.

[247] We have reviewed these documents and do not find in their content the key terms of a transaction, the pricing or the timing.

[248] What Finkelstein could not have known from his access of the documents on September 14 and 15, was that Barrick had ceased discussions regarding a joint bid with Goldcorp for Placer and was evaluating other acquisitions. Staff placed weight on Finkelstein’s access of documents on September 14 and 15 as the time when he gained MNPI and was obliged not to disclose that information. Staff then pointed to Finkelstein contacting Azeff at 21:11 at home for 1 minute and Azeff’s home calling Finkelstein’s home at 21:14 for 8 minutes and 42 seconds. Staff submits that MNPI was then conveyed to Azeff, who together with Bobrow on September 15 and 16, solicited sales of 25,500 shares of Placer for a value of approximately $500,000.

[249] If the accessed documents pointed to a takeover of Placer, the logical trading by Azeff and Bobrow would have been to buy Placer shares.

[250] Not only do we find that there was no pertinent information in the documents accessed, but also, that the sale of Placer shares by Azeff clients is illogical and negates any suggestion that Finkelstein passed on MNPI to Azeff.

[251] The access of the historical 2004 AIF of Placer on October 18 would only allow Finkelstein to know that the target was Placer. Nothing else in the document is relevant to a transaction in October 2005. It is unusual that Finkelstein would access a gold company AIF when he was looking for precedents for a U.S. REIT that he was working on. The 2004 AIFs for hundreds of companies were available on SEDAR by October 2005. Nevertheless, according to Staff’s theory, Finkelstein knew Placer was the target on September 14. This document did not enhance his knowledge.

[252] There is insufficient evidence that Finkelstein knew in the last four days of October that an offer for Placer was about to be made. We are not satisfied that there is a clear, cogent and convincing evidentiary base to permit us to draw an inference that Finkelstein was in possession of the material undisclosed facts regarding the proposed takeover by Barrick of Placer or that he subsequently tipped Azeff.

[253] There were a number of contacts between Azeff and Finkelstein from October 25 to October 30 and we note that there was substantial buying of Placer by family, clients and friends of Azeff and Bobrow from October 26 to 28, resulting in purchases of 72,300 shares of Placer for a value of $1,388,280 in the DK4 accounts.

[254] While, it is possible that Finkelstein learned of the imminent offer from heightened office activity and the notoriety of Barrick as a longstanding client, we are not prepared to enter into that speculation.

[255] Azeff and Bobrow testified that they always held shares of prominent gold companies, including Barrick and Placer, in their own accounts and their clients’ portfolios. They were aware of the consolidation in the market and traded to take advantage of it. Their evidence is consistent with the context of the times and the events. We accept their evidence regarding this transaction.

[256] The allegations against Finkelstein of tipping, against Azeff of trading and tipping and against Bobrow of trading are dismissed. For the same reasons, we dismiss the allegations that Azeff and Bobrow recommended Placer contrary to the public interest.

XI. DYNATEC

A. Overview of Transaction

[257] Dynatec was a service provider to the mining industry. It also owned the Ambatovy Project, a developable gold and base metal property in Madagascar. As well, its assets included a 24.5% interest in FNX Mining Company. Dynatec was a reporting issuer in Ontario during the period January 1, 2007 to May 31, 2007.

[258] On February 14, 2007 Sherritt International Company ("**Sherritt**") and Dynatec signed a Confidentiality Agreement. On February 27, the Dynatec Board of Directors established a Special Committee to analyze any proposal received from Sherritt.

[259] On March 11, the Special Committee met to discuss a letter from Sherritt which stated that, subject to due diligence, Sherritt was prepared to offer Dynatec shareholders a price of up to Cdn. $3.65 per share (a 36% premium based on Dynatec's 20-day average trading price) which would include consideration in Sherritt and FNX shares, as well as cash.

[260] On April 3, 2007, the Dynatec Special Committee, to whom Davies was counsel, recommended that Dynatec should proceed with Sherritt's takeover proposal that, for each Dynatec share, a Dynatec shareholder would receive 0.64 FNX shares and 0.19 Sherritt shares.

[261] On April 17, the Special Committee met, noted that the financial advisers were then ready to deliver a fairness opinion and that negotiations with Sherritt were substantially complete.

[262] On April 19, the Special Committee met twice, at 16:00 and at 21:30 and recommended the transaction to the Board of Dynatec. The Board then met at 22:00 and approved the agreement. The next morning, April 20 at 8:20, the public announcement was made that Sherritt would acquire Dynatec. Dynatec shareholders were to receive 0.19 of a Sherritt share and 0.635 of a FNX share. Based on Dynatec's TSX closing price on April 19, the consideration represented a 29% premium.

B. The Allegations

[263] Staff alleges that Finkelstein, while in a special relationship to Dynatec, acquired material undisclosed facts relating to the Dynatec transaction by April 18, 2007 and passed on those material facts to his friend Azeff who, in turn, then tipped Bobrow and at least one client, LK, of the material facts contrary to subsection 76(2) of the *Act*. Staff also alleges that Azeff and Bobrow, while in possession of the material facts, recommended investing in Dynatec shares to clients/friends contrary to the public interest. Finally, Staff alleges that Miller tipped Cheng and that Miller and Cheng, while in possession of material undisclosed facts, illegally traded in shares of Dynatec contrary to subsection 76(1) of the *Act* and that Cheng recommended purchasing Dynatec to family members contrary to the public interest.

C. Material Facts and Finkelstein's Knowledge

[264] The intended purchase of Dynatec by Sherritt at a premium of approximately 30% is a material fact that would reasonably be expected to have had a significant effect on the market value of shares of Dynatec. This fact was not generally disclosed to the market during the period from February to April prior to the public announcement on April 20 that Sherritt was going to acquire Dynatec.

[265] Finkelstein was not one of the Davies' lawyers involved in this transaction. He accessed transaction documents on April 18 beginning at 12:48. The first document accessed was the Voting Agreement found in the Dynatec file under the code name Project Champion.

[266] Between 14:07 and 14:10, Finkelstein accessed a number of other documents related to the transaction including the Indicative Timetable, which showed the timing for the press release, and the Combination Agreement.

[267] We find that Sherritt's takeover proposal of Dynatec was a material fact from April 3, 2007 (the "**Dynatec Material Fact**"). Finkelstein had knowledge of the material fact from April 18. The material fact was not generally disclosed until the public announcement on April 20.

D. The Evidence

[268] Between January and April 15, 2007, there were approximately 30 phone calls between Finkelstein and Azeff.

[269] On April 18, while Finkelstein was accessing the Voting Agreement, he called from his work to Azeff's work for 2 minutes and 12 seconds. Then six minutes later, at 12:54, Finkelstein called Azeff again, this time from cell to cell. This call is only of one minute duration, the minimum billing, which means there may or may not have been any direct contact. At 14:49,

Azeff called Finkelstein at work for 2 minutes and 36 seconds. At 21:10, there was another call from Finkelstein's home to Azeff for 16 minutes.

[270] At 13:01, on April 18, shortly after the calls with Finkelstein, Azeff called his very good friend HG and beginning nine minutes later, HG purchased 40,000 shares of Dynatec. HG had not owned Dynatec in the six months prior and there is no evidence of contact, from or to Azeff's CIBC work line, between Azeff and HG in the weeks before April 18. The absence of prior work-to-work calls is unusual since there were 409 work calls between the two friends in 2007. The April 18 call from Azeff to HG and his immediate purchases stand out. These share purchases were made in nine minutes, by 13:10.

[271] At 13:24 and 13:25, Azeff placed an additional two calls of one minute each to HG, and beginning three minutes later, at 13:28, HG purchased 15,000 additional Dynatec shares. On the following day, HG purchased a further 7,000 shares to make his two day total investment 62,000 shares valued at $235,893.

[272] LK admitted he invested in Dynatec based on discussions he had with Azeff. He purchased 3,000 shares on April 18, but not through Azeff. He made his purchases online. He and his wife, for whom he had trading authority, purchased a total of 10,000 shares of Dynatec that day and a further net amount of 10,000 shares on April 19 to hold, in aggregate, 20,000 shares valued at $75,705. This represented approximately 15% of their investment portfolio.

[273] LK called Miller in Toronto four times on April 18, commencing at 11:58 and at 14:40, 15:09 and at 15:45. At 15:12, Miller bought 8,000 shares for his wife and by the end of the day on April 19, he had bought 20,000 shares in that account valued at $76,160. These purchases represented 10% of their investment account.

[274] Cheng also bought 22,600 shares for his family members on April 18 and 19 at a value of $85,804.

[275] On April 18 at 15:38, Bobrow called HF, but may not have reached him as the call duration was only 30 seconds. They definitely did speak on April 19 at 9:37, when the call lasted for four minutes and 24 seconds. Within an hour, HF bought 20,000 shares of Dynatec for $75,800.

[276] Irene S., Azeff and Bobrow's assistant, also bought 5,000 shares as did her husband, MM, an investment adviser with a different branch of CIBC in Montreal. Their purchases of 10,000 shares for $38,750 were made on April 18 shortly after a call that Irene S. made to her husband at 14:41. Although Irene S. gave evidence at the hearing, she did not suggest that these purchases or any of her and her husband's purchases of the target shares in the other impugned transactions, emanated from anywhere other than information passed on by Azeff or Bobrow. It was not suggested that their timely trading was initiated by independent research by Irene S. or her investment adviser husband, MM.

E. The Respondents' Evidence

[277] Finkelstein vigorously denied that he passed MNPI to Azeff. He explained that he accessed the Voting Agreement because he was directed to these documents by Gula as a result of the Court of Appeal decision in *Sunrise REIT*. That decision was the subject of discussion and written commentary and was of interest to all corporate commercial lawyers. The decision, dated March 6, 2007, addressed the interaction between Standstill Agreements and fiduciary outs. Finkelstein was working on transactions for two other clients at the time and thought that the Voting Agreement might provide guidance. With respect to the other accessed document, he provided only general and not specific evidence.

[278] Finkelstein could not remember the purpose of, and the content of, the four calls on April 18.

[279] Azeff and Bobrow both pointed to the fact that the C family placed an unsolicited order for 225,000 Dynatec shares through Irene S., while Azeff and Bobrow were on a lunch break. They stated this purchase, which was partially filled through a cross by the CIBC trade desk on the TSX at 13:33, indicated that there was already information in the marketplace prompting buying of Dynatec shares.

[280] Azeff and Bobrow vehemently denied that they passed on MNPI to LK, HG and HF since they themselves had none. Azeff, however did acknowledge that he told HG that a sophisticated client had placed a large order for Dynatec shares. HG did not know the C family personally, but knew them by reputation to be clever and astute. He would press Azeff to tell him what that family was buying and Azeff would, on occasion, do so. This was one of those occasions.

[281] Azeff and Bobrow also testified to the fact that the C family placed two orders on April 18, one for a block trade of Transalta shares and one for a block trade of 225,000 Dynatec shares. Azeff and Bobrow said that the Dynatec order was placed with Irene S. at 12:38 and that she called the order desk in Toronto for a block trade which was crossed internally. Azeff and Bobrow say they were at lunch when the order was placed and could not have recommended Dynatec to the C family.

[282] LK acknowledged that he learned of Dynatec from Azeff and may have heard that it was "in play" from Azeff. He said that he did discuss it with Miller.

[283] Miller had no records or research regarding Dynatec. He was sure that he discussed it with LK. There is no evidence that Miller owned Dynatec previously.

F. Analysis and Conclusion

[284] In this instance, the established facts are of such a nature as to make inferences therefrom reasonable: Finkelstein's first access of the Voting Agreement containing MNPI on April 18 at 12:48 and a contemporaneous call to Azeff; the further access to four more documents containing MNPI between 14:07 and 14:10, which include timing for a press release and the identity of the parties to the transaction, including the distribution of FNX shares as part of the purchase transaction; several more calls with Azeff that day; the initiation of the purchases of Dynatec shares by LK, HG, Irene S., Miller and Cheng. The timing of all these events within a two day span, the purchases of Dynatec shares in Montreal and Toronto in one afternoon by friends and clients of Azeff and Bobrow and the volume of shares purchased, a significant 595,000 shares, supports the inference that Finkelstein tipped Azeff with MNPI, Azeff passed on the tip to Bobrow and both Azeff and Bobrow recommended to their close friends and clients the purchase of shares of Dynatec. This inference is more probable than any innocent explanation.

[285] We have reviewed the Voting Agreement that Finkelstein accessed on April 18 and observe nothing in it that addresses the concerns that the Court of Appeal raised in its March 6 decision. Usually, as was the case in this instance, law firms circulate commentary on ground-breaking law and provide drafting guidance. It thus seems strange that Gula would have directed Finkelstein to a document six weeks after the March 6 decision. Gula did not give evidence. There is no reasonable explanation for the access to the other documents one hour and 20 minutes later. The very title of these documents would indicate no relevance to the issue of interaction between a Standstill Agreement and fiduciary out.

[286] Four to five calls between Azeff and Finkelstein in one afternoon and evening is notable. Finkelstein was extremely busy, docketing on average, 200 hours a month in 2007. He very seldom spoke to Azeff about his modest investment account. He was not a social conversationalist. We are particularly troubled by the contemporaneous timing of the access to the Voting Agreement and the initial call to Azeff.

[287] The essence of Azeff's and Bobrow's submissions regarding the sudden buying of Dynatec shares by HG, LK and HF was that there was information in the market that Dynatec was being taken over, that the C family placed unsolicited orders to buy 225,000 shares with their assistant Irene S. while they were at lunch on April 18 and that the subsequent purchases of Dynatec shares by HG, LK and HF were not as a result of MNPI that they passed to these persons.

[288] Bobrow explained that he had been trying, unsuccessfully, to interest the C family in buying shares of Dynatec in the previous year, 2006. Bobrow believed that the Dynatec share price failed to consider the value of the Ambatovy development capability which had been greenlighted to proceed by the Government of Madagascar. Bobrow also felt that the market price did not reflect the proper value of the 24% of FNX that Dynatec owned. He was frustrated that the C family were resistant to his entreaties.

[289] A lot of evidence was adduced regarding the timing of the C family's purchases of shares of Transalta and of Dynatec on April 18. The evidence regarding timing of the orders and the lunch time presence or absence of Azeff and Bobrow was contradictory and unclear. We are not prepared to make a finding on the balance of probabilities that Azeff or Bobrow recommended Dynatec shares to the C family.

[290] We also find that the C family's unsolicited purchases of Dynatec shares does not, of necessity, negate a finding that Azeff and Bobrow recommended Dynatec shares to others based on their knowledge of MNPI. The number of phone calls between Finkelstein and Azeff on April 18, the subsequent calls between Azeff and HG, the calls by Bobrow to HF on April 18 and 19, the four calls by LK to Miller on April 18 and the voluminous buying of shares of Dynatec by HG, HF, LK, Miller and Cheng on April 18 and 19, in the 48 hours before the public announcement, when none of these persons had bought any Dynatec shares in the previous six months, gives rise to the strong inference, and we so find, that Azeff and Bobrow passed on MNPI.

[291] LK admitted receiving a recommendation to buy Dynatec from Azeff and acting on it by purchasing shares online. He then spoke to Miller. Miller acknowledged that he heard of Dynatec from LK and bought shares of Dynatec for family and clients and passed on a recommendation to Cheng to also consider doing so.

[292] The evidence regarding the conversations between LK and Miller and Miller and Cheng was very general and extremely minimal. It amounted to little more than that LK told Miller about Dynatec. There is no evidence that LK told Miller he was buying Dynatec, that the company was being taken over, at what price, or when. While it is true that both Miller and Cheng made rapid purchases, without further due diligence, shortly after receiving LK's call, we are not satisfied that the evidence establishes, on a balance of probabilities, that Miller and Cheng received any MNPI.

[293] We find that Azeff learned of the MNPI from Finkelstein. Finkelstein accessed documents related to the transaction, which contained the MNPI. Azeff knew or ought to have known that Finkelstein was in a special relationship with Dynatec. Azeff knew that Finkelstein was a mergers and acquisitions lawyer at Davies, the law firm involved in the acquisition transaction, and, from the information imparted, he knew or ought to have known that Finkelstein was in a special relationship with Dynatec.

[294] Bobrow, as a long-time partner of Azeff, had all the same knowledge and information as Azeff. Both acknowledged in their testimony that they shared information and clients. We find that Azeff tipped Bobrow with the MNPI and its source at about 12:50 on April 18. Bobrow telephoned a high net worth client, HF, who made initial purchases of Dynatec shares the next day. We also find that Bobrow knew or ought to have known that Azeff was in a special relationship with Dynatec.

[295] Azeff called HG at 13:01 on April 18. Nine minutes later, HG started purchasing Dynatec shares for himself and not through CIBC. Within approximately ten minutes, he had bought an initial 40,000 shares. There were further calls between Azeff and HG that afternoon. HG bought another 15,000 shares of Dynatec that day and 7,000 more the next day, for an aggregate of 62,000 shares with a value of $236,000. HG had no recollection why he purchased shares that day. He had an uncertain theory that Azeff may have told him that another client was accumulating a position, but it was only a theory based on hindsight. We reject this explanation as speculative.

[296] We find that Azeff and Bobrow, on learning of MNPI from Finkelstein, recommended the purchase of Dynatec shares to a number of clients, including HG, HF and LK, contrary to the public interest. Both Azeff and Bobrow knew they were in possession of MNPI, were prudent enough not to purchase shares for themselves or their family members, but nevertheless wanted to benefit their friends and clients to the disadvantage of the general investing public.

[297] With respect to allegations relating to Dynatec, we find that from April 18, 2007 to April 20, 2007:

(a) Dynatec was a "reporting issuer" within the meaning of the *Act*;

(b) Finkelstein was a person in a special relationship with Dynatec within the meaning of subsection 76(5)(c) or (e) of the *Act*;

(c) the Dynatec Material Fact was a fact that would reasonably be expected to have a significant effect on the market price or value of the Dynatec securities and is therefore a "material fact" with respect to Dynatec, within the meaning of the *Act*;

(d) Finkelstein informed Azeff and Azeff informed Bobrow, other than in the necessary course of business, of the Dynatec Material Fact before it had been generally disclosed, contrary to subsection 76(2) of the *Act* and contrary to the public interest;

(e) each of Azeff and Bobrow learned of the Dynatec Material Fact from a person whom he knew or ought reasonably to have known was a person in a special relationship with Dynatec and, as a result, were persons in a special relationship with Dynatec within the meaning of subsection 76(5)(e) of the *Act*; and

(f) each of Azeff and Bobrow acted contrary to the public interest by recommending, with knowledge of the Dynatec Material Fact, that a client or clients purchase Dynatec securities.

[298] We do not find that the allegations of illegal trading, tipping and recommending against Miller and Cheng have been established in respect of Dynatec.

XII. LEGACY HOTELS REIT

A. Overview of the Transaction

[299] Legacy was a Canadian REIT that owned landmark hotel properties including the Fairmont Royal York. It was a reporting issuer in Ontario during the period June 1 to August 31, 2007.

[300] On April 12, 2007, Davies was retained to represent a joint venture between Cadbridge Investors LP ("**Cadbridge**") and InnVest REIT ("**InnVest**") to purchase Legacy. The file was given the code name Project Diamond. Finkelstein was the primary lawyer assigned to the file and carried the process to its completion including through the public announcement of the transaction on July 12.

[301] The expected sale of the Legacy hotels was prominently reported in the public press in November 2006 and again in January 2007. On March 1, Legacy issued a press release indicating that it was exploring strategic alternatives. The analysts reported that this meant the REIT would be sold or restructured, but then no further announcement was made.

[302] On June 18, Legacy issued a press release providing an update concerning its review of strategic alternatives and stated that it had received non-binding offers in the range of $12.60 per unit, which represented a 14% premium over the trading price immediately prior to the March 1 announcement. The press release noted that there could be no assurances that negotiations would result in a binding offer.

[303] The market was skeptical, questioned whether any of the non-binding offers would become firm and the price of a unit on the TSX started declining to $12 after the June 18 press release. Clearly, there were more sellers than buyers.

[304] On June 29, the Special Committee reviewed issues relating to the Support Agreement and Lock-Up Agreement between Legacy and the Offeror Consortium, Cadbridge and InnVest. Between June 29 and July 1, the probability of the deal occurring became more likely.

[305] By July 4, the deal had progressed to the point that it was going to close and would likely be announced on July 12. During the following week from July 5 to 12, continued meetings and email correspondence show that the details of the deal were being finalized.

[306] The press release announcing the takeover of Legacy by the Offeror Consortium, Cadbridge and InnVest was issued at 17:36 on July 12, 2007.

B. The Allegations

[307] Staff alleges that Finkelstein, while in a special relationship to Legacy, tipped Azeff of the material undisclosed facts regarding the Legacy transaction on or before July 5 and that Azeff then tipped Bobrow of the undisclosed material facts; in so doing, Staff alleges that Finkelstein and Azeff acted contrary to subsection 76(2) of the *Act* and the public interest. They further allege that Azeff and Bobrow then recommended investing in Legacy units to family members, clients and friends, contrary to the public interest.

C. The Material Facts and Finkelstein's Knowledge

[308] As the principal Davies lawyer on the transaction, Finkelstein was in a special relationship with Legacy. As of April 2007, he became aware of the potential of a transaction involving Legacy.

[309] By June 11, Finkelstein was aware that the Offeror Consortium had submitted a bid for all of the outstanding units of Legacy. Between June 29 and July 4, Finkelstein knew that the deal had progressed and was likely to close. He also knew that the target announcement date was approximately July 12. These were material facts, which, if disclosed, would reasonably be expected to have a significant effect on the market price or value of Legacy units (the "**Legacy Material Facts**").

[310] During the period June 29 and up until the press release on July 12, only the lawyers, including Finkelstein, other advisors and the parties knew these facts. The market certainly did not, as the price continued to decline. The Legacy Material Facts were generally undisclosed to the public until the press release of July 12.

D. The Evidence

[311] Although there are phone records of calls between Finkelstein and Azeff in the period from January to early April 2007, the frequency increased noticeably from April 9, which continued to mid-June.

[312] In April and May, clients of Azeff and Bobrow purchased 5,000 units in the expectation that there would be positive developments toward a sale. When nothing occurred, those units were sold in May and early June.

[313] In July 2007, Finkelstein was engaged in two takeover transactions, Legacy, announced July 12 and IPC REIT announced August 14, 2007. In that month he docketed 258 hours.

[314] A flurry of phone calls occurred on July 4 and 5 between Finkelstein and Azeff. Of particular note is a call at 7:39 on July 5, which lasted almost four minutes. Then, at 8:29, Azeff called HG for a call duration of over 3 minutes, and 38 minutes later, prior to the opening of the markets, HG entered an order to purchase 5,000 Legacy units. He said he could not recall how he first became interested in Legacy. On Friday, July 6, HG bought a further 5,000 units.

[315] On July 10, Finkelstein called Azeff from his office at 7:47 for two minutes. Azeff then called HG at 8:52. They spoke again at 9:02 and at 9:49 HG bought 5,000 units and at 9:53 he bought another 15,000 units for a combined investment of $240,420 that day.

[316] On July 10, Bobrow emailed HF, who was in Germany, "I also think we should buy some Legacy, bought some for my mom this morning at 12:02". Within 26 minutes HF gave Bobrow the order to buy 10,000 shares.

[317] On July 12, the day of the announcement, there was a further call between Finkelstein and Azeff and immediately thereafter, two calls between Azeff and HG. Eleven minutes after the last call, HG entered an order to purchase 3,000 more units of Legacy and then, after further phone calls between Azeff and HG, another 5,000 units. In total, HG bought 38,000 units for $456,978. At 14:35, HG sent Azeff a blank email with the subject line "2 hours!". At 17:36, the Legacy takeover was announced.

[318] LK testified that he had discussions with Azeff, initiated by Azeff, regarding Legacy. He passed on the information received from Azeff to Miller. LK did not testify that he had owned Legacy previously. On July 9, 10 and 12, he and his wife purchased 6,500 units for a total value of $78,120, a sizeable amount for his portfolio. During these few days, there were, at least, a half dozen calls between Azeff and LK.

[319] Commencing on July 5, Azeff, on behalf of his family members, bought 8,300 units for $100,395 and Bobrow, on behalf of his mother, bought 6,500 units for $78,910. Mrs. Bobrow had previously sold her holdings of Legacy on May 22 and 24, 2007. Azeff's family had not owned any Legacy units in the prior six months.

[320] Irene S. and her family members bought 17,000 units on July 5, 6, 10, 11 and 12 for $205,221. They had previously sold 4,000 units on May 25, 2007.

[321] Between July 5 and July 12, family and clients under the DK4 code invested $3,058,387 in 254,200 Legacy units.

[322] The evidence given by the witnesses, other than the respondents, was that the initiation of their purchases of Legacy flowed from the recommendations of either Azeff or Bobrow.

E. Analysis and Conclusion

[323] Finkelstein argued that he was not aware of the internal Legacy management discussions. However, between June 29 and July 4, Finkelstein learned that the Legacy deal had progressed and had become a firm deal that would be announced on or about July 12.

[324] Azeff's and Bobrow's submissions were principally that they followed the REIT market closely, their prior trading in Legacy aligns with publicly available information, their trading does not fit with Finkelstein's knowledge and phone contact and that there were published rumours that Legacy was a takeover target. Azeff and Bobrow sought to justify the purchases by their family members, clients and friends on the basis that the June 18 press release from Legacy, stating that it had received non-binding offers, was very positive news. Azeff also viewed a June 19 report from CIBC as an indication that a higher bid or bids might surface. If that was his belief, he would have bought then and not waited. But wait he did and the subsequent decline in late June and early July must have dented any optimism regarding Legacy receiving a firm, binding offer.

[325] There were numerous calls between Finkelstein's and Azeff's home and office numbers on July 4 and 5. We find that Azeff learned of the MNPI from Finkelstein. Azeff knew or ought to have known that Finkelstein was in a special relationship with Legacy. Azeff knew that Finkelstein was a mergers and acquisitions lawyer at Davies and, from the information imparted, he knew or ought to have known that Finkelstein was in a special relationship with Legacy.

[326] Bobrow, as a long-time partner of Azeff, had all the same knowledge and information as Azeff. Both acknowledged in their testimony that they shared information and clients. We find that Azeff tipped Bobrow with the MNPI he learned from Finkelstein. Bobrow in turn recommended Legacy to family and clients. We also find that Bobrow knew or ought to have known that Azeff was in a special relationship with Legacy.

[327] Given the numerous phone calls between Finkelstein and Azeff from July 4 to July 12, the large volume of precipitous purchasing of Legacy units from July 5 onwards by the Azeff and Bobrow family members, and their clients, and the passing on of information to friends immediately following calls between Finkelstein and Azeff, namely HG and LK, who bought large numbers of units themselves, separately, we determine that it is reasonable to infer, on a balance of probabilities, that Finkelstein, who was in a special relationship with Legacy, conveyed MNPI to Azeff contrary to section 76(2) of the *Act*. Azeff in turn tipped Bobrow. Both recommended the purchase of Legacy units to family, friends and clients, contrary to the public interest. Of particular note is an email from HG to Azeff at 14:35 on July 12 "2 hours!", a few hours before the public announcement.

[328] With respect to allegations relating to Legacy, we find that from July 4, 2007 to July 12, 2007:

(a) Legacy was a "reporting issuer" within the meaning of the *Act*;

(b) Finkelstein was a person in a special relationship with Legacy within the meaning of subsection 76(5)(b) of the *Act*;

(c) the Legacy Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the Legacy securities and was therefore "material facts" with respect to Legacy, within the meaning of the *Act*;

(d) Finkelstein informed Azeff and Azeff informed Bobrow, other than in the necessary course of business, of the Legacy Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the *Act* and contrary to the public interest; and

(e) each of Azeff and Bobrow acted contrary to the public interest by recommending, with knowledge of the Legacy Material Facts, that a client or clients purchase Legacy securities.

XIII. IPC US REIT

A. Overview of the Transaction

[329] In 2007, IPC was a REIT reporting issuer in Ontario that invested exclusively in US commercial real estate. It was listed on the TSX.

[330] After unsuccessful attempts to sell itself privately in 2005 and 2006, on January 30, 2007, IPC issued a press release announcing the intention to solicit proposals for its acquisition.

[331] On February 6, 2007, Davies opened a file to represent IPC during the public sale process. Finkelstein was the principal Davies' lawyer assigned to the matter. He thus was in a special relationship with the issuer.

[332] 140 potential buyers expressed interest and 67 entered into Confidentiality and Standstill Agreements in the month of February.

[333] On March 14, 2007, potential buyers submitted first round bids. Of these, five were invited into the second round. Despite negotiations through May and June, none of the bids was accepted.

[334] On August 2, Behringer, which had signed a Confidentiality Agreement with IPC in February, but had never submitted a bid, reached out to IPC regarding an Acquisition Proposal. Finkelstein was copied on the transmission. That afternoon, IPC responded positively that it did not see any deal breakers. There was no evidence that Finkelstein knew of any proposal by Behringer earlier than August 2.

[335] On August 14, the takeover was publicly announced.

B. The Allegations

[336] Staff alleges that Finkelstein, while in a special relationship with IPC, informed Azeff of the material undisclosed facts of the transaction, contrary to subsection 76(2) of the *Act*.

[337] Staff further alleges that Azeff tipped Bobrow and both, while in a special relationship with, and in possession of material undisclosed facts, recommended the purchase of IPC units to family members, clients and friends contrary to the public interest.

C. Analysis and Conclusion

[338] Since buying of IPC units in DK4 accounts began at 11:13 on August 8, Staff's allegations hinge on communication between Finkelstein and Azeff on August 7.

[339] For 2007, complete records exist for work-to-work calls, cell phone calls and home-to-home calls. Between July 23 and August 7, the records indicate no calls between Finkelstein and Azeff.

[340] On August 7 at 17:00, there was a call from Azeff to Finkelstein at work for one minute. It is incongruous that Azeff was calling Finkelstein seeking information of a confidential nature when they had not spoken for two weeks. Finally, we accept the evidence of Finkelstein that he had no conversation with Azeff as he was on a conference call at the time.

[341] Without the vital link of the telephone call on August 7, any inference to be drawn from the immediately subsequent fortuitous trading by Azeff and Bobrow and others would be inferences founded on speculation.

[342] The allegations related to IPC are dismissed.

XIV. CONCLUSION

[343] Upon considering the evidence tendered, submissions made and legal authorities cited to us by the parties with respect to each allegation, and for each of the Respondents, we make the following conclusions:

1. With respect to allegations relating to Masonite, we find that from November 16, 2004 to December 22, 2004:

   (a) Masonite was a "reporting issuer" within the meaning of the *Act*;

   (b) Finkelstein was a person in a special relationship with Masonite within the meaning of subsection 76(5)(b) of the *Act*;

   (c) the MHM Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the Masonite securities and were therefore "material facts" with respect to Masonite, within the meaning of the *Act*;

   (d) Finkelstein informed Azeff, Azeff informed Bobrow and LK, Bobrow informed HF, Miller informed Cheng and DW, and Cheng informed SK, other than in the necessary course of business, of the MHM Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the *Act* and contrary to the public interest;

   (e) each of Azeff, Bobrow, Miller and Cheng learned of the MHM Material Fact from a person whom he knew or ought reasonably to have known was a person in a special relationship with Masonite and, as a result, were persons in a special relationship with Masonite within the meaning of subsection 76(5)(e) of the *Act*;

   (f) based on the foregoing, Azeff, Bobrow, Miller and Cheng each purchased Masonite securities with knowledge of the MHM Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the *Act* and contrary to the public interest; and

   (g) each of Azeff, Bobrow, Miller and Cheng acted contrary to the public interest by recommending, with knowledge of the MHM Material Facts, that a client or clients purchase Masonite securities.

2. With respect to allegations relating to MDSI, we are not satisfied that Finkelstein tipped Azeff or that Azeff in turn recommended MDSI to others.

3. With respect to allegations relating to Placer, we are not satisfied that Finkelstein tipped Azeff, that Azeff tipped Bobrow, traded and recommended Placer to others or that Bobrow traded and recommended to others.

4. With respect to allegations relating to Dynatec, we find that from April 18, 2007 to April 20, 2007:

   (a) Dynatec was a "reporting issuer" within the meaning of the *Act*;

   (b) Finkelstein was a person in a special relationship with Dynatec within the meaning of subsection 76(5)(c) or (e) of the *Act*;

   (c) the Dynatec Material Fact was a fact that would reasonably be expected to have a significant effect on the market price or value of the Dynatec securities and is therefore a "material fact" with respect to Dynatec, within the meaning of the *Act*;

   (d) Finkelstein informed Azeff and Azeff informed Bobrow, other than in the necessary course of business, of the Dynatec Material Fact before it had been generally disclosed, contrary to subsection 76(2) of the *Act* and contrary to the public interest;

   (e) each of Azeff and Bobrow learned of the Dynatec Material Fact from a person whom he knew or ought reasonably to have known was a person in a special relationship with Dynatec and, as a result, were persons in a special relationship with Dynatec within the meaning of subsection 76(5)(e) of the *Act*; and

   (f) each of Azeff and Bobrow acted contrary to the public interest by recommending, with knowledge of the Dynatec Material Fact, that a client or clients purchase Dynatec securities.

5. We do not find that the allegations of illegal trading, tipping and recommending against Miller and Cheng have been established in respect of Dynatec.

6. With respect to allegations relating to Legacy, we find that from July 4, 2007 to July 12, 2007:

   (a) Legacy was a "reporting issuer" within the meaning of the *Act*;

   (b) Finkelstein was a person in a special relationship with Legacy within the meaning of subsection 76(5)(b) of the *Act*;

   (c) the Legacy Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the Legacy securities and were therefore "material facts" with respect to Legacy, within the meaning of the *Act*;

   (d) Finkelstein informed Azeff and Azeff informed Bobrow, other than in the necessary course of business, of the Legacy Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the *Act* and contrary to the public interest; and

   (e) each of Azeff and Bobrow acted contrary to the public interest by recommending, with knowledge of the Legacy Material Facts, that a client or clients purchase Legacy securities.

7. With respect to allegations relating to IPC, we are not satisfied that Finkelstein tipped Azeff or that Azeff tipped Bobrow and recommended IPC to others or that Bobrow recommended IPC.

[344] For the reasons outlined above, we will also issue an order dated March 24, 2015 which sets down the date of May 21, 2015 for a hearing with respect to sanctions and costs in this matter.

Dated at Toronto this 24th day of March, 2015.

"Alan Lenczner"
Alan J. Lenczner

"AnneMarie Ryan"
AnneMarie Ryan

"Catherine Bateman"
Catherine E. Bateman

APPENDIX A:

SECTION 76 OF THE ACT IN THE RELEVANT PERIOD FROM 2004-2007

Trading where undisclosed change

76. (1) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

Tipping

(2) No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

Idem

(3) No person or company that proposes,

(a) to make a take-over bid, as defined in Part XX, for the securities of a reporting issuer;

(b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer; or

(c) to acquire a substantial portion of the property of a reporting issuer,

shall inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition.

Defence

(4) No person or company shall be found to have contravened subsection (1), (2) or (3) if the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

Definition

(5) For the purposes of this section,

"person or company in a special relationship with a reporting issuer" means,

(a) a person or company that is an insider, affiliate or associate of,

(i) the reporting issuer,

(ii) a person or company that is proposing to make a take-over bid, as defined in Part XX, for the securities of the reporting issuer, or

(iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property,

(b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person or company described in subclause (a) (ii) or (iii),

(c) a person who is a director, officer or employee of the reporting issuer or of a person or company described in subclause (a) (ii) or (iii) or clause (b),

(d) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c),

(e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

Idem

(6) For the purpose of subsection (1), a security of the reporting issuer shall be deemed to include,

(a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or

(b) a security, the market price of which varies materially with the market price of the securities of the issuer.

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
BlackIce Enterprise Risk Management Inc.	09-Jan-15	21-Jan-15	21-Jan-15	27-Mar-15
SunOil Ltd.	23-Mar-15	02-Apr-15		
Tantalex Resources Corporation	11-Jul-14	23-Jul-14	23-Jul-14	18-Mar-15

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Northcore Resources Inc.	09-Mar-15	20-Mar-15	20-Mar-15		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Northcore Resources Inc.	09-Mar-15	20-Mar-2015	20-Mar-15		

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Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment – Proposed Amendments to MI 62-104 Take-Over Bids and Issuer Bids, Proposed Changes to NP 62-203 Take-Over Bids and Issuer Bids, and Proposed Consequential Amendments

CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 62-104 *TAKE-OVER BIDS AND ISSUER BIDS*

PROPOSED CHANGES TO NATIONAL POLICY 62-203 *TAKE-OVER BIDS AND ISSUER BIDS*

AND

PROPOSED CONSEQUENTIAL AMENDMENTS

March 31, 2015

INTRODUCTION

The Canadian Securities Administrators (the **CSA** or **we**) are publishing, for a 90 day comment period, proposed amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer* Bids (**MI 62-104**) and changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (**NP 62-203**) (collectively, the **Proposed Bid Amendments**).

Currently, MI 62-104 governs take-over bids and issuer bids in all jurisdictions of Canada, except Ontario. In Ontario, substantively harmonized requirements for take-over bids and issuer bids are set out in Part XX of the *Securities Act* (Ontario) (the **Ontario Act**) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (the **Ontario Rule**). NP 62-203 applies in all jurisdictions of Canada. In this Notice, MI 62-104, the Ontario Act, the Ontario Rule and NP 62-203 are collectively referred to as the **take-over bid regime** or **bid regime**.

The Ontario Securities Commission intends to seek legislative amendments to the Ontario Act to accommodate the adoption of MI 62-104 in Ontario, as amended by the Proposed Bid Amendments and the Proposed Market Price Amendment (as described below) (such amended instrument, **Proposed NI 62-104**). The proposed repeal of the Ontario Rule and the related consequential amendments necessary to facilitate the adoption of Proposed NI 62-104 in Ontario (the **Proposed Harmonization**) are set out in Annex M to the version of this Notice published in Ontario.

As a result of the Proposed Bid Amendments and the Proposed Harmonization, we are proposing to make related consequential amendments to each of the following, in the applicable jurisdictions in which such instruments and/or policies have been adopted (collectively, the **Consequential Amendments**):

- Multilateral Instrument 11-102 *Passport System* (**MI 11-102**);
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (**MI 13-102**);
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**);
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**);
- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (**55-104CP**);
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**);
- Companion Policy 61-101CP to MI 61-101 (**61-101CP**); and
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**).

Additionally, we are proposing a technical amendment to the meaning of "market price" in MI 62-104 (the **Proposed Market Price Amendment**) as it relates to securities acquired pursuant to an issuer bid that is made in the normal course on a published market other than a designated exchange in reliance on the normal course issuer bid exemption set out in paragraph 4.8(3)(c) of MI 62-104.

The texts of the Proposed Bid Amendments, Proposed Market Price Amendment and Consequential Amendments are set out in Annexes B to L of this Notice and will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.msc.gov.mb.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca

SUBSTANCE AND PURPOSE OF THE PROPOSED BID AMENDMENTS

1. Overview of the Proposed Bid Amendments

In general, we intend the Proposed Bid Amendments to enhance the quality and integrity of the take-over bid regime and rebalance the current dynamics among offerors, offeree issuer boards of directors (**offeree boards**), and offeree issuer security holders by (i) facilitating the ability of offeree issuer security holders to make voluntary, informed and co-ordinated tender decisions, and (ii) providing the offeree board with additional time and discretion when responding to a take-over bid.

Specifically, the Proposed Bid Amendments require that all non-exempt take-over bids

(1) receive tenders of more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror (the **Minimum Tender Requirement**);

(2) be extended by the offeror for an additional 10 days after the Minimum Tender Requirement has been achieved and all other terms and conditions of the bid have been complied with or waived (the **10 Day Extension Requirement**); and

(3) remain open for a minimum deposit period of 120 days unless

(a) the offeree board states in a news release a shorter deposit period for the bid of not less than 35 days that is acceptable to the offeree board, in which case all contemporaneous take-over bids must remain open for at least the stated shorter deposit period, or

(b) the issuer issues a news release that it has agreed to enter into, or determined to effect, a specified alternative transaction, in which case all contemporaneous take-over bids must remain open for a deposit period of at least 35 days

(the **120 Day Requirement**).

We are also proposing amendments to other aspects of the take-over bid regime relating to these key amendments.

2. Objectives of the Proposed Bid Amendments

(1) Minimum Tender Requirement

The Minimum Tender Requirement establishes a mandatory majority acceptance standard for all take-over bids, whether a bid is made for all or only a portion of the outstanding securities. The purpose of the majority standard is to address the current possibility that control of, or a controlling interest in, an offeree issuer can be acquired through a take-over bid without a majority of the independent security holders of the offeree issuer supporting the transaction if the offeror elects, at any time, to waive its minimum tender condition (if any) and end its bid by taking up a smaller number of securities.

The Minimum Tender Requirement allows for collective action by security holders in response to a take-over bid in a manner that is comparable to a vote on the bid. Collective action for security holders in response to a take-over bid is difficult under the current bid regime, where an unsolicited offeror's ability to reduce or waive its minimum tender condition may impel security holders to tender out of concern that they will miss their opportunity to tender and be left holding securities of a controlled

company. Coupled with the 10 Day Extension Requirement, the Minimum Tender Requirement is intended to mitigate this "pressure to tender".

(2) 10 Day Extension Requirement

The 10 Day Extension Requirement is intended to provide offeree issuer security holders who have not tendered their securities to a take-over bid with an opportunity to participate in the bid after a majority of independent security holders have tendered to the bid and it is known that the bid will succeed.

Currently, offerors are not required to extend their bids after they have taken up offeree issuer securities and there is no formal mechanism for offeree issuer security holders to coordinate their actions in the bid context. As a result, offeree issuer security holders make tender decisions without knowing what other security holders will do and with the awareness that the offeror can always elect to waive its minimum tender condition (if any) and end its bid by taking up a smaller number of securities, thereby altering the future control of the offeree issuer. This situation creates "pressure to tender" or coercion concerns since security holders may tender to the take-over bid or sell in the market not because they support the bid but because they are afraid of being "left behind" if the offeror obtains sufficient tenders from other security holders.

The 10 Day Extension Requirement addresses the "pressure to tender" concern by protecting the security holder's ability to tender whether or not it supports the bid in the first instance. As well, by mitigating coercive dynamics in the tender process, the 10 Day Extension Requirement enhances the quality and integrity of the collective majority security holder decision on whether or not to approve the bid.

(3) 120 Day Requirement

The 120 Day Requirement is intended to provide offeree boards with a longer, fixed period of time to consider and respond to a take-over bid. The current take-over bid regime mandates a minimum 35 day deposit period. Where a board has adopted a security holder rights plan (a **Rights Plan**) to prevent a bid from being completed after 35 days, securities regulators have typically cease-traded the Rights Plan approximately 45-60 days after the commencement of the bid.

The 120 Day Requirement responds to the concern, as expressed by some commenters on the CSA Proposal and AMF Proposal (each as defined below), that offeree boards do not have enough time to respond to unsolicited take-over bids with appropriate action, such as seeking value-maximizing alternatives or developing and articulating their views on the merits of the bid.

We are, however, proposing two important exceptions as part of the 120 Day Requirement.

The first exception we are proposing is if an offeree board issues a news release in respect of a proposed or commenced take-over bid stating a deposit period for the bid of not less than 35 days that is acceptable to the offeree board. In this circumstance, the bid regime would provide that the minimum deposit period for the subject bid must be at least the number of days from the date of the bid as stated in the news release, instead of 120 days from the date of the bid. The purpose of this exception is to accommodate a shorter deposit period in cases where a longer bid period is not necessary for the offeree board to respond to the bid.

However, in order to prevent discriminatory and unequal treatment of competing bids under the bid regime, if an offeree board issues a news release stating an acceptable shorter deposit period for one bid, then all other outstanding or subsequent take-over bids, including any unsolicited bids, would also become subject to the stated shorter minimum deposit period rather than the minimum 120 day deposit period. In any event, no bid could be open for less than 35 days.

The second exception we are proposing is if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an "alternative transaction" (being, generally, a plan of arrangement or similar change of control transaction to be approved by security holders of the issuer). In such case, the minimum deposit period for any then-outstanding take-over bid or subsequent take-over bid commenced before the completion of the alternative transaction must be at least 35 days, rather than 120 days, from the date of the bid. The purpose of this exception is to avoid unequal treatment of offerors when a board-supported change of control transaction is proposed to be effected through an "alternative transaction" rather than by way of a "friendly" take-over bid. As well, since the purpose of the 120 day minimum deposit period is to provide offeree boards with a longer period of time to respond to an unsolicited bid, there is no need for the 120 day minimum deposit period to apply where the offeree issuer has determined that an alternative transaction is appropriate.

Where an offeror reduces the initial deposit period in connection with a deposit period news release or an alternative transaction, the bid would have to remain open for at least 10 days after the date of any notice of variation concerning the reduction of the deposit period.

The 120 Day Requirement does not apply to issuer bids; the minimum deposit period for issuer bids remains 35 days.

BACKGROUND

Prior proposals

On March 14, 2013, the CSA published for comment proposed National Instrument 62-105 *Security Holder Rights Plans* and proposed Companion Policy 62-105CP *Security Holder Rights Plans* (together, the **CSA Proposal**). The Autorité des marchés financiers (the **AMF**), while participating in the publication for comment of the CSA Proposal, concurrently published a consultation paper entitled *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* (the **AMF Proposal**).

The CSA Proposal and the AMF Proposal sought to address, in different ways, concerns raised with respect to the CSA's current approach to reviewing defensive tactics adopted by offeree boards in response to, or in anticipation of, unsolicited or "hostile" take-over bids.

CSA Proposal

The purpose of the CSA Proposal was to create a framework for the regulation of Rights Plans adopted by offeree boards in response to, or in anticipation of, unsolicited bids. The CSA Proposal would have allowed an offeree board to maintain a Rights Plan in the face of an unsolicited bid if a majority of the equity or voting securities of the offeree issuer (excluding the securities of the unsolicited offeror and its joint actors) were voted in favour of the Rights Plan, either in the face of the unsolicited bid or at the offeree issuer's previous annual meeting.

AMF Proposal

While the CSA Proposal addressed the use of Rights Plans by offeree boards, the AMF Proposal raised more fundamental issues regarding the regulation of defensive tactics in Canada, including the role of offeree boards when faced with unsolicited take-over bids. The AMF Proposal, as described, sought to remedy the structural imbalance between offerors and offeree boards and update the policy framework of the take-over bid regime to reflect the current legal and economic environment and market practices regarding unsolicited take-over bids.

The AMF Proposal put forward two changes to address concerns with the existing regulatory approach to defensive tactics. First, it suggested replacing National Policy 62-202 *Take-Over Bids – Defensive Tactics* (**NP 62-202**) with a new policy that would recognize the fiduciary duty of the offeree board to the offeree issuer when responding to an unsolicited bid. The new policy would have limited the intervention of securities regulators to circumstances where security holders were deprived of the opportunity to consider a *bona fide* offer because the offeree board failed to adequately manage its conflicts of interest, and to circumstances that demonstrated an abuse of security holders' rights or that negatively impacted the efficiency of the capital markets.

Second, the AMF Proposal proposed to amend the take-over bid regime to require a minimum tender condition of more than 50% of all outstanding offeree issuer securities owned or held by persons other than the offeror and its joint actors, along with a mandatory 10 day extension of the bid following an announcement that the minimum tender condition had been met to give the remaining security holders the opportunity to tender to the bid.

Public comments on proposals

The comment periods for the CSA Proposal and the AMF Proposal ended on July 12, 2013. We received 72 comment letters from various market participants, including issuers, institutional investors, industry associations and law firms that reflected a broad diversity of opinions on the two proposals. Many commenters provided helpful substantive submissions, information and alternative considerations. We wish to thank all of the commenters for their contributions.

General summaries of comments received in respect of the CSA Proposal and AMF Proposal are set out, respectively, at Annex A.1 and Annex A.2 of this Notice.

Proposed Bid Amendments

On September 11, 2014, we published CSA Notice 62-306 *Update on Proposed National Instrument 62-105 Security Holder Rights Plans and AMF Consultation Paper An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* (the **Update Notice**).

As indicated in the Update Notice, in light of the comments received on the CSA Proposal and AMF Proposal, and following further reflection and analysis, the CSA decided to propose specific amendments to the bid regime as an alternative harmonized policy approach for the regulation of take-over bids. At this time, the CSA are not contemplating any changes to the current take-over bid exemptions or NP 62-202.

SUMMARY AND EXPLANATION OF THE PROPOSED BID AMENDMENTS

The Proposed Bid Amendments introduce important new requirements for take-over bids and alter the procedural framework for the conduct of take-over bids. The following is an explanation of the current bid regime and Proposed Bid Amendments as they relate to these topics:

1. Deposit Periods
2. Minimum Tender Requirement
3. 120 Day Requirement
4. Variations to a Bid
5. Changes in Information for a Bid
6. Take Up and Payment
7. Withdrawal Rights

In preparing the Proposed Bid Amendments, we have endeavored to preserve the existing structure of Part 2 of MI 62-104, which includes combined provisions for both issuer bids and take-over bids, to the greatest extent possible.

Unless otherwise specified, all references to sections in this part are to sections of MI 62-104 and the Proposed Bid Amendments.

1. Deposit Periods

(a) Current Bid Regime

Currently, the take-over bid regime mandates a deposit period of at least 35 days from the date of the bid and requires an extension of the deposit period in circumstances where there is a variation in the terms of the bid, subject to limited exceptions. Outside of these parameters, an offeror can elect to extend its bid as it deems necessary or desirable as long as it complies with the take up and payment provisions of the bid regime for any extension that occurs after all of the terms and conditions of the bid have been complied with or waived.

(b) Proposed Bid Amendments

As a consequence of the Proposed Bid Amendments, there will be three distinct deposit periods for a take-over bid: (i) an initial deposit period; (ii) a mandatory 10 day extension period if certain conditions are met; and (iii) any further deposit period(s) where the offeror voluntarily extends its bid after the expiry of the mandatory 10 day extension period.

(i) Initial deposit period

The initial deposit period is the period during which securities may be deposited under a take-over bid excluding the mandatory 10 day extension period or any extension period thereafter. This initial deposit period includes any extension by the offeror that may be necessary to permit satisfaction of the Minimum Tender Requirement or any other condition of the bid prior to the mandatory 10 day extension period. At a minimum, the initial deposit period must satisfy the 120 Day Requirement. The Proposed Bid Amendments provide that an offeror cannot take up securities deposited under its bid until the 120 Day Requirement is satisfied, all terms and conditions of the bid have been complied with or waived, and the Minimum Tender Requirement is satisfied. If a bid does not meet these three requirements at the expiry date of the bid fixed by the offeror, then the offeror would not be permitted to take up securities deposited under the bid and would have to determine whether it wishes to either (further) extend the initial deposit period or abandon its bid.

(ii) Mandatory 10 day extension period

The 10 Day Extension Requirement applies to a take-over bid if, at the expiry of the initial deposit period, the 120 Day Requirement is satisfied, all terms and conditions of the bid have been complied with or waived, and the Minimum Tender Requirement is satisfied. Once these requirements are met, an offeror must immediately take up all securities tendered to the bid (subject to a limited exception for partial take-over bids). The Proposed Bid Amendments require that the offeror issue and file a news release, with specified information, concurrent with the commencement of the mandatory 10 day extension period.

The 10 Day Extension Requirement is a standard feature of "permitted bid" Rights Plans[5] and a significant number of commenters supported the 10 Day Extension Requirement (as set out in the AMF Proposal).

(iii) Subsequent extension period and restrictions on extension

The Proposed Bid Amendments allow a take-over bid that is not a partial take-over bid to be further extended after the expiry of the mandatory 10 day extension period.

Under the Proposed Bid Amendments, a partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period. As a partial take-over bid is for a fixed number of securities and a pro-ration requirement applies, the offeror will have effectively achieved its desired minimum number of tenders before the commencement of the mandatory 10 day extension period and the number of securities ultimately taken up by the offeror will not increase as a result of tenders during the mandatory 10 day extension period. Also, under the Proposed Bid Amendments, in order to accommodate the required 10 day extension, an offeror making a partial take-over bid is permitted to defer take up and payment in respect of a portion of the tendered securities until the end of the mandatory 10 day extension period when the pro-ration factor can be properly calculated. Any further extension to a partial take-over bid after the expiry of the mandatory 10 day extension period would be unnecessary.

2. Minimum Tender Requirement

(a) Current Bid Regime

The current take-over bid regime does not impose a Minimum Tender Requirement for a take-over bid. An offeror may elect to make its bid conditional upon the receipt of a specified percentage of deposited securities; however any such condition can be waived at the discretion of the offeror. An offeree issuer may, independent of any take-over bid regime requirement, adopt a "permitted bid" Rights Plan that would require that a "permitted bid" have a minimum 50% tender condition.

(b) Proposed Bid Amendments

The Minimum Tender Requirement applies to all take-over bids and an offeror is prohibited from taking up any securities deposited under its bid unless, among other things, the Minimum Tender Requirement is satisfied.

The proposed Minimum Tender Requirement prohibits an offeror from taking up securities under a bid unless the bid receives tenders of more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror.

The following examples show how this requirement would apply in different scenarios. References to the "offeror" in the table below include the offeror and any joint actors.

Type of Take-Over Bid	Percentage of Issued and Outstanding Offeree Issuer Securities Owned by Offeror (as at Date of the Bid)	Tenders Required under the Minimum Tender Requirement
Take-over bid for all issued and outstanding offeree issuer securities (e.g. 1,000,000 securities)	0%	50% + 1 of all issued and outstanding offeree issuer securities (or 500,001 securities)
Take-over bid for all issued and outstanding offeree issuer securities (e.g. 1,000,000 securities)	40% (or 400,000 securities)	50% + 1 of the remaining 60% of issued and outstanding offeree issuer securities not owned by the offeror (or 300,001 securities)

[5] In general, a "permitted bid" Rights Plan includes conditions that allow a take-over bid to be made to offeree issuer security holders without triggering the Rights Plan if: (i) the offeror keeps the take-over bid open for a minimum period of time (usually 60 days); (ii) the offeror is not entitled to acquire securities under the take-over bid unless a majority of securities owned by persons other than the offeror are tendered; and (iii) the offeror is obligated to extend the bid for an additional 10 days following the offeror's initial take up under the take-over bid.

Type of Take-Over Bid	Percentage of Issued and Outstanding Offeree Issuer Securities Owned by Offeror (as at Date of the Bid)	Tenders Required under the Minimum Tender Requirement
Partial take-over bid for 25% of all issued and outstanding offeree issuer securities (e.g. 250,000 of outstanding 1,000,000 securities)	0%	50% + 1 of all issued and outstanding offeree issuer securities (or 500,001 securities) Offeror will take up the desired 25% issued and outstanding offeree issuer securities *pro rata* from all tendered securities (or 250,000 securities)
Partial take-over bid for 25% of all issued and outstanding offeree issuer securities (e.g. 250,000 of outstanding 1,000,000 securities)	10% (or 100,000 securities)	50% + 1 of the remaining 90% of issued and outstanding offeree issuer securities not owned by the offeror (or 450,001 securities) Offeror will take up the desired 25% issued and outstanding offeree issuer securities not owned by the offeror *pro rata* from all tendered securities (or 250,000 securities)

The Minimum Tender Requirement does not preclude an offeror from establishing a higher minimum tender condition for its bid or waiving such higher minimum tender condition. However, an offeror is prohibited from taking up securities deposited under the bid until the Minimum Tender Requirement and 120 Day Requirement have been satisfied and all terms and conditions of the bid have been complied with or waived.

The Minimum Tender Requirement was put forward in the AMF Proposal and supported by many commenters. The effect of the Minimum Tender Requirement is comparable to the majority security holder approval requirement for Rights Plans that was proposed under the CSA Proposal. We also note that a Minimum Tender Requirement is a standard feature of a "permitted bid" under the terms of a "permitted bid" Rights Plan.

3. 120 Day Requirement

(a) Current Bid Regime

Under the current bid regime, an offeror must allow securities to be deposited under its bid for at least 35 days from the date of the bid (s. 2.28) and an offeror must not take up securities deposited under a bid until the expiration of that period (s. 2.29). An offeror complies with these requirements by having its bid expire not earlier than 35 days following the date of the bid.

The current bid regime's minimum 35 day deposit period provides all offeree issuer security holders with that period of time in which to receive disclosure regarding, assess the merits of, and ultimately decide whether to tender to, a take-over bid. As long as an offeree issuer security holder deposits its securities within this 35 day period and all conditions to the bid are complied with or waived, then the offeror is obligated to acquire all of the security holder's deposited securities (subject to pro-ration in the case of a partial take-over bid) (s. 2.32).

(b) Proposed Bid Amendments

Under the Proposed Bid Amendments, take-over bids will have a minimum 120 day deposit period (s. 2.28.1), subject to the exceptions described below.

We note that several commenters in connection with their consideration of the CSA Proposal, AMF Proposal, or both, supported a longer minimum deposit period of 90 or 120 days.

(i) Shortened minimum deposit period – deposit period news release

Under the Proposed Bid Amendments, the offeree board has an option to initiate a reduction of the minimum deposit period from a minimum of 120 days to a minimum of 35 days. This may be desirable for an offeree board because otherwise, for example, a board-supported change of control transaction structured as a take-over bid would be less expeditious than an alternative structure such as a plan of arrangement effected under corporate law if a firm 120 day minimum deposit period applied.

Under the Proposed Bid Amendments, the minimum deposit period of a take-over bid can be shortened if an offeree issuer issues a deposit period news release in respect of the bid that states an initial deposit period of not more than 120 and not less than 35 days that is acceptable to the offeree board (s. 2.28.2(1)). The stated shorter deposit period in the news release would be expressed as a number of days from the date of the bid (e.g. 35 days, 60 days, 90 days, etc.) rather than with reference to an actual date (e.g. July 1, 2015). A deposit period news release is a news release in respect of a proposed or commenced take-over bid. Any purported deposit period news release in respect of a possible future bid would not have the effect of shortening the minimum deposit period for any take-over bid. We have proposed changes to NP 62-203 to provide guidance on deposit period news releases (sections 2.11 and 2.12).

The Proposed Bid Amendments expressly provide that, despite the application of a shorter deposit period for a bid as a result of the issuance of a deposit period news release, an offeror must not allow securities to be deposited under its bid for an initial deposit period of less than 35 days from the date of the bid (s. 2.28.2(3)). We think this limitation is appropriate because a period of 35 days provides all offeree issuer security holders with an equal and sufficient period of time in which to obtain disclosure regarding, assess the merits of, and ultimately decide whether to tender to, a take-over bid.

Where a deposit period news release is issued in respect of a bid, the offeror can avail itself of the shortened minimum deposit period permitted under the regime by reflecting the earlier expiry date in its bid documents (if the bid is announced at the same time as or after the deposit period news release is issued) or by way of a notice of variation (if the bid was commenced prior to the issuance of the deposit period news release) (s. 2.12(1)). We have proposed changes to NP 62-203 to provide guidance on shortened deposit periods, including in the additional circumstances described below (section 2.10).

(ii) Shortened minimum deposit period – application to other bids

While the Proposed Bid Amendments are intended to provide more time for offeree boards to respond to an unsolicited take-over bid and accommodate the expeditious completion of a "friendly" bid, they are not intended to result in discriminatory treatment among competing offerors. As such, the Proposed Bid Amendments provide that if an offeree board issues a deposit period news release stating an acceptable shorter deposit period for one bid, then all other outstanding or subsequent take-over bids, including any unsolicited bids, would also be entitled to the stated shorter minimum deposit period rather than the minimum 120 day deposit period (s. 2.28.2(2)). The rationale for this mechanism is similar to the rationale that underlies the "waive for one, waive for all" provision present in the majority of "permitted bid" Rights Plans.

A competing offeror with an outstanding bid at the time the deposit period news release is issued in respect of another bid must vary its bid if it intends to avail itself of the shorter deposit period (s. 2.12(1)). An offeror that commences a take-over bid subsequent to the issuance of a deposit period news release in respect of another bid could adopt the stated shorter minimum deposit period, provided that the bid was commenced prior to the expiry of the bid that was the subject of the deposit period news release or any other take-over bid that had been commenced at the time the deposit period news release was issued (s. 2.28.2(2)(b)). The purpose of this limitation on the application of a shortened deposit period for future take-over bids is to make clear that the shortened deposit period applies only to contemporaneous bids.

The following examples demonstrate how the minimum deposit period provisions would apply in different scenarios.

Issuance of Deposit Period News Release	Bid Scenario / Shorter Deposit Period	Result
Deposit period news release issued in respect of proposed Bid A	Deposit period news release states a minimum deposit period of 35 days in respect of Bid A	Bid A subject to minimum deposit period of 35 days from the date of the bid
Deposit period news release issued in respect of previously commenced Bid A	Deposit period news release states a minimum deposit period of 35 days in respect of Bid A Bid B also commenced prior to issuance of deposit period news release in respect of Bid A	Bid A and Bid B both subject to minimum deposit period of 35 days from the date of each respective bid Offerors A and B may vary bids to expire at least 35 days from date of their respective bid (provided that the bid must not expire before 10 days from the date of variation)

Issuance of Deposit Period News Release	Bid Scenario / Shorter Deposit Period	Result
Deposit period news release issued in respect of previously commenced Bid A	Deposit period news release states a minimum deposit period of 35 days in respect of Bid A Bid C commenced subsequent to issuance of deposit period news release in respect of Bid A, but before expiry of Bid A	Bid A and Bid C both subject to minimum deposit period of 35 days from the date of each respective bid Offeror A may vary its bid to expire at least 35 days from date of its bid (provided that the bid must not expire before 10 days from the date of variation) Bid C subject to minimum deposit period of 35 days from the date of its bid

(iii) Shortened minimum deposit period – alternative transaction

In addition to deposit period provisions that afford equal treatment of competing offerors, we believe that an offeror should not be disadvantaged vis-à-vis another potential acquiror solely on the basis of the structure of the change of control transaction (e.g. take-over bid as opposed to a plan of arrangement). Accordingly, the Proposed Bid Amendments provide that, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an "alternative transaction", then the minimum deposit period for any then-outstanding take-over bid or subsequent take-over bid (commenced before the completion or the abandonment of the alternative transaction or expiry of any other outstanding take-over bid) must be at least 35 days, rather than 120 days, from the date of the bid (s. 2.28.3). We do not think that an offeree board that has already agreed to an alternative transaction needs the additional time between 35 to 120 days to consider and respond to a competing take-over bid. The effect of maintaining the 120 day deposit period would be to unduly prejudice existing offerors or those contemplating a bid after the alternative transaction is announced.

We propose a concept of "alternative transaction" principally based on the definition of "business combination" currently found in MI 61-101. The definition of "alternative transaction" has been drafted with a view to capturing other types of change of control transactions that could be agreed to or initiated by the issuer. As well, we propose that the definition encompass, based upon language found in business corporation legislation, a sale, lease or exchange of property by an issuer that requires approval by way of a special resolution. We have proposed changes to NP 62-203 to provide guidance on alternative transactions (sections 2.13 and 2.14).

The following examples demonstrate how the minimum deposit period provisions would apply in different scenarios involving an "alternative transaction".

Timing of Announcement of Alternative Transaction	Result
Announcement of alternative transaction in respect of offeree issuer subsequent to commencement of Bid A	Bid A subject to minimum deposit period of 35 days from the date of its bid Offeror A may vary bid to expire at least 35 days from date of its bid (provided that the bid must not expire before 10 days from the date of variation)
Announcement of alternative transaction in respect of offeree issuer prior to commencement of Bid B Bid B commenced before completion or abandonment of alternative transaction	Bid B subject to minimum deposit period of 35 days from the date of its bid

(iv) Scope and duration of shortened minimum deposit period

The 120 Day Requirement is, effectively, restored for any new bids commenced after all of the bids to which sections 2.28.2 and 2.28.3 apply have expired and any applicable alternative transaction has been completed or abandoned.

4. Variations to a Bid

(a) Current Bid Regime

Currently, if an offeror varies its take-over bid it must issue and file a news release and send a notice of variation to all security holders subject to the bid whose securities were not taken up before the date of variation (s. 2.12(1)). If there is a variation, 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 (s. 2.12(3)). An exception to these requirements exists for a variation consisting solely of a waiver of a condition in the bid where the consideration offered for the securities consists solely of cash (s. 2.12(4)).

The current bid regime also prohibits variations to a bid after expiry of the period during which securities can be deposited under a bid, except for a waiver of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror (s. 2.12(5)).

(b) Proposed Bid Amendments

We are proposing two changes to the variation provisions in the bid regime as a result of the Proposed Bid Amendments.

(i) Reduction or extension of deposit period is a variation to the bid

First, we are adding language confirming that any reduction to the period during which securities may be deposited to a bid pursuant to section 2.28.2 or section 2.28.3 constitutes a variation requiring the offeror to issue and file a news release and send a notice of variation (s. 2.12(1)). This would apply where an offeror shortens its initial deposit period following the issuance of a deposit period news release or as a result of the offeree issuer announcing an "alternative transaction". If an offeror varies its bid to shorten the deposit period, subsection 2.12(3) requires that the bid must not expire before 10 days after the date of the offeror's corresponding notice of variation, which means that the period during which securities may be deposited under the bid may have to be extended.

We note that currently subsection 2.12(1) expressly states that a variation to a bid includes an extension of the period during which securities may be deposited to the bid. As a result, that provision would apply to the mandatory 10 day extension period required under paragraph 2.31.1(a), or any other permissible extension, such that the offeror would be required to issue and file a news release and send a notice of variation in connection with any such extension.

(ii) Prohibition on Certain Variations after Bid Pre-Conditions Achieved

The second change we are proposing to the variation provisions of the bid regime is an express restriction on variations in the terms of a take-over bid after the offeror becomes obligated to take up securities (s. 2.12(6)). Under the Proposed Bid Amendments, an offeror must immediately take up securities deposited under its bid if, at the expiry of the initial deposit period, the 120 Day Requirement and Minimum Tender Requirement are satisfied and all terms and conditions of the bid have been complied with or waived (s. 2.32.1(1)).

The purpose of the general restriction on variations after these requirements are satisfied is to preclude possible prejudice to security holders whose deposited securities were taken up prior to the variation. We are, however, proposing exceptions to this restriction for (i) a variation to extend the time during which securities may be deposited under the bid, or (ii) a variation to increase the consideration offered for securities subject to the bid.

5. Changes in Information for a Bid

(a) Current Bid Regime

The bid regime sets out requirements where there is a change in the information contained in a bid circular, a notice of change or a 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 (s. 2.11). In that circumstance, an offeror must promptly issue and file a news release and send a notice of change to every security holder to whom the bid was required to be sent and whose securities were not taken up before the date of the change. The purpose of this requirement is to ensure that security holders who have yet to deposit securities to the bid, or those whose deposited securities have not yet been taken up, can consider whether the new information impacts their tender decision. As well, a security holder is entitled to withdraw securities deposited to a bid during the 10 day period after the date of a notice of change provided that the securities were not already taken up by the offeror before the date of the notice of change (s. 2.30).

(b) Proposed Bid Amendments

We are proposing to introduce a new provision concerning changes in information whereby, if an offeror is required to send a notice of change prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change, which means that the initial deposit period may have to be extended (s. 2.11(5)). The purpose of this restriction is to ensure that all withdrawal rights associated with a notice of change have lapsed before an offeror can take up deposited securities at the expiry of the initial deposit period (assuming that, otherwise, the 120 Day Requirement has been satisfied, all terms and conditions of the bid have been complied with or waived, and the Minimum Tender Requirement has been satisfied). We have also proposed changes to NP 62-203 to provide further guidance on changes in information (section 2.15 in Annex D).

We believe this extension requirement is appropriate because it ensures that the Minimum Tender Requirement is achieved in circumstances where offeree issuer security holders have had adequate time to consider the information in a notice of change. We also think that security holders who have an opportunity to deposit securities to a bid during the mandatory 10 day extension period, after a bid has already succeeded in meeting the Minimum Tender Requirement and all other conditions to the bid, should make their tender decisions with assurance that the bid cannot fail as a result of withdrawal rights being exercised and the Minimum Tender Requirement no longer being met.

6. Take Up and Payment

(a) Current Bid Regime

The purpose of the take up and payment provisions of the bid regime is to provide an equitable framework for the timely take up and payment of securities deposited to a bid.

The current bid regime provides that if all terms and conditions of a take-over 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 possibly earlier in certain cases) (s. 2.32(1)). The offeror cannot take up deposited securities until the expiration of 35 days from the date of the bid. An offeror is specifically required to pay for any securities taken up as soon as possible, and in any event, not later than 3 business days after take up (s. 2.32(2)). An offeror is further obligated to take up and pay for securities deposited subsequent to the date on which it first took up securities deposited under the bid no later than 10 days after the deposit of those securities (s. 2.32(3)). In addition, an offeror is prohibited from extending its take-over bid if all the terms and conditions have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn (s. 2.32(4)).

The current take-over bid regime includes exceptions to the take up and payment provisions for partial take-over bids. Section 2.26 provides that, if a greater number of securities are deposited to a partial take-over bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately according to the number of securities deposited by each security holder. This *pro rata* requirement is intended to ensure that all depositing security holders to a partial take-over bid are treated equally, rather than permitting an offeror to take up its desired number of offeree issuer securities on a first-come-first-served basis or arbitrarily from the pool of deposited securities. To permit *pro rata* treatment of security holders, an offeror is only required to take up, by the specified times, the maximum number of securities that the offeror can take up without contravening the *pro rata* requirement at the expiry of the bid (s. 2.32(5)).

(b) Proposed Bid Amendments

(i) Prohibition on take up of deposited securities until conditions satisfied

Under the Proposed Bid Amendments (s. 2.29.1), an offeror is prohibited from taking up securities deposited under its bid unless

(a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,

(b) all terms and conditions of the bid have been complied with or waived, and

(c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

(ii) Obligation to take up and pay for deposited securities

We propose that if at the expiry of the initial deposit period, (i) the 120 Day Requirement is satisfied, (ii) all terms and conditions of the bid have been complied with or waived, and (iii) the Minimum Tender Requirement is satisfied, the offeror must immediately take up securities deposited under the bid (s. 2.32.1(1)). As discussed below, an exception to this general obligation is available for partial take-over bids.

(iii) General take up and payment provisions

As is the case under the current bid regime, the Proposed Bid Amendments require that an offeror must pay for securities taken up as soon as possible, and in any event, not later than 3 business days after the securities deposited under the bid are taken up (s. 2.32.1(2)).

Securities deposited to a take-over bid (other than a partial take-over bid) during the mandatory 10 day extension period or a subsequent extension period must be taken up and paid for by the offeror no later than 10 days after the deposit of securities (s. 2.32.1(3)). For a take-over bid that is not a partial take-over bid, an offeror is also prohibited from extending its bid at any time after the expiry of the mandatory 10 day extension period unless it has first taken up all securities deposited to the bid (s. 2.32.1(4)).

(iv) Partial Take-Over Bids

As is the case under the current bid regime, an offeror that has made a partial take-over bid is required to take up securities tendered on a *pro rata* basis where a greater number of securities are deposited under the bid than the offeror is bound or willing to acquire. The Proposed Bid Amendments exempt an offeror making a partial take-over bid from the general obligation to immediately take up all deposited securities if, at the expiry of the initial deposit period, the specified bid conditions in section 2.32.1(1) are satisfied; instead, the offeror is only required to take up at that time the maximum number of securities that it can without contravening the *pro rata* requirement (s. 2.32.1(6)). The Proposed Bid Amendments further provide that an offeror making a partial take-over bid must take up any securities deposited during the initial deposit period and not already taken up by it in reliance on subsection 2.32.1(6), and securities deposited during the mandatory 10 day extension period, on a *pro rata* basis and not later than one day after the expiry of the mandatory 10 day extension period (s. 2.32.1(7)). Partial take-over bids cannot be extended beyond the expiry of the mandatory 10 day extension period.

7. Withdrawal Rights

(a) Current Bid Regime

The take-over bid regime provides that a security holder can withdraw securities deposited by it under a take-over bid (a) at any time before those 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 or a notice of variation (subject to exceptions), or (c) if the securities have not been paid for by the offeror within 3 business days after the securities were taken up (s. 2.30(1)).

(b) Proposed Bid Amendments

(i) Suspension of withdrawal rights for partial take-over bids

The Proposed Bid Amendments include new restrictions on the availability of withdrawal rights in respect of partial take-over bids.

Securities deposited under a partial take-over bid must be taken up on a *pro rata* basis by the offeror. Under the Proposed Bid Amendments, an offeror would not be able to determine the exact number of securities that it could take up *pro rata* from each depositing security holder at the expiry of the initial deposit period because it may receive additional deposits of securities during the mandatory 10 day extension period. An offeror making a partial take-over bid is obliged to determine the portion of securities deposited under the bid at the expiry of the initial deposit period that it is required to take up without contravening the *pro rata* requirement (ss. 2.32.1(1) and (6)). However, an offeror making a partial take-over bid will have to defer take up of at least some number of deposited securities until the end of the mandatory 10 day extension period when the pro-ration factor can be finally determined. As a consequence, a number of securities deposited to a successful partial take-over bid that has met the Minimum Tender Requirement and all other conditions to the bid under subsection 2.32.1(1) would remain subject to rights of withdrawal for lack of take up and/or in respect of a notice of change issued after the expiry of the initial deposit period but before the deposited securities are taken up upon expiry of the mandatory 10 day extension period. We do not think this outcome would be consistent with the framework of the Proposed Bid Amendments which impose a mandatory extension period for a partial take-over bid when an offeror would otherwise be in a position to take up securities and complete its offer.

We propose to suspend or remove a depositing security holder's withdrawal rights in respect of securities deposited under a partial take-over bid before the expiry of the initial deposit period but not taken up by the offeror at the expiry of the initial deposit period in reliance on the exception for pro-ration in subsection 2.32.1(6). The suspension of withdrawal rights for lack of take up of these securities and removal of withdrawal rights for these securities in respect of a notice of change or notice of variation after the expiry of the initial deposit period are set out in new provisions in subsections 2.30(1.1) and 2.30(2)(a.1). We believe these provisions are appropriate because the offeror's delay in taking up deposited securities is necessitated by its obligation to comply with the *pro rata* requirement and a depositing security holder is otherwise assured that, in any event, the partial take-over bid will be completed in a timely manner once the mandatory 10 day deposit period has expired. As noted in the "Changes

in Information for a Bid" section above, we also think that security holders who have an opportunity to deposit securities to a bid during the mandatory 10 day extension period, after a bid has already succeeded in meeting the Minimum Tender Requirement and all other conditions to the bid, should make their tender decisions with assurance that the bid cannot fail as a result of withdrawal rights being exercised and the Minimum Tender Requirement no longer being met.

(ii) Removal of withdrawal rights in respect of certain variations

The bid regime provides that a security holder can withdraw securities deposited under a take-over bid at any time before the expiration of 10 days from the date of a notice of change or a notice of variation. This particular right of withdrawal is not available if (a) the securities have already been taken up by the offeror, or (b) the variation consists either solely of an increase in consideration offered for the securities and an extension of time for deposit of securities (to not later than 10 days after the date of the notice of variation), or a waiver of one or more of the conditions of the bid where the consideration offered for offeree issuer securities consists solely of cash (s. 2.30(2)).

We propose that the right of withdrawal in respect of a notice of variation not apply to a variation in the terms of a take-over bid *subsequent to the expiry of the initial deposit period* where the variation consists of *either* (i) an increase in the consideration offered for the securities subject to the bid, *or* (ii) an extension of the time for deposit to not later than 10 days from the date of the notice of variation (s. 2.30(2)(b)(iii)). We believe that an increase of consideration or a limited extension of time for deposits after all conditions of the bid under subsection 2.32.1(1) have been satisfied (such as an extension to provide for the mandatory 10 day extension period) does not warrant the availability of a withdrawal right for security holders, particularly where the bid regime otherwise mandates timely take up and payment for deposited securities.

CONSEQUENTIAL AMENDMENTS

Unless otherwise noted below, the Consequential Amendments update section and instrument references to reflect the Proposed Harmonization.

We have proposed certain consequential changes to NP 62-103 to provide policy guidance in respect of the proposed amendments to MI 62-104.

The consequential amendments to NI 43-101 reflect the fact that, for the purposes of the technical report filing requirement in subparagraph 4.2(5)(a)(ii) of that Instrument in respect of disclosure contained in a directors' circular, the appropriate reference in that subparagraph is to the expiry of the initial deposit period, not the expiry of the bid.

The Ontario Securities Commission and the Autorité des marchés financiers are proposing to change section 4.1 of 61-101CP to clarify, for the avoidance of doubt, that it is their view that notwithstanding that Form 62-104F1 *Take-Over Bid Circular* of MI 62-104 is not specifically referenced in subsection 2.2(1)(d) of MI 61-101, the disclosure set out in such form is required for insider bids.

ANTICIPATED IMPACT OF PROPOSED BID AMENDMENTS

The following are some expected impacts of adopting the Proposed Bid Amendments.

1. Mitigation of coercive aspects of the current tender process

- We expect that the Minimum Tender Requirement and the 10 Day Extension Requirement will address the "pressure to tender" and coercion concerns associated with the existing tender process. We believe this would ensure the legitimacy of individual security holder tender decisions.

- The possibility that an offeror would waive its minimum tender condition may lead security holders that do not support the bid to tender to the bid or risk being left holding less liquid securities of the offeree issuer. The mandatory Minimum Tender Requirement would prevent this circumstance.

2. Collective majority security holder decision-making

- The Minimum Tender Requirement would ensure that an effort to gain control of a company, or a controlling interest in a company, would succeed only with the uncoerced approval of a majority of independent security holders. Further, security holders would have additional time to assess bid information as a result of the 120 Day Requirement.

- One consequence of the Minimum Tender Requirement is that minority security holders who tender to a bid will not have their securities taken up where holders of a majority of the securities do not support the bid.

3. Increased leverage for offeree boards

- The 120 Day Requirement would provide offeree boards with more time to communicate their vision for the issuer and provide information about its value. The offeree board would also have more time to attract competing offers or seek value-maximizing strategic alternatives.

- The fact that the 120 day minimum deposit period can be shortened if an offeree board issues a news release stating an acceptable shorter deposit period may provide an incentive for offerors to negotiate with the offeree issuer.

4. Higher quality bids

- Offerors may put forward higher quality bids to win the support of a majority of independent security holders.

5. Fewer partial take-over bids

- The Proposed Bid Amendments could reduce the number of partial take-over bids because all partial take-over bids would have to satisfy the Minimum Tender Requirement to proceed.

ALTERNATIVES CONSIDERED

The CSA Proposal and the AMF Proposal, and comments thereon, were alternatives considered. The Proposed Bid Amendments are now the CSA's preferred regulatory approach for the regulation of take-over bids.

UNPUBLISHED MATERIALS

In developing the Proposed Bid Amendments, we have not relied on any significant unpublished study, report, or other written materials.

SUBSTANCE AND PURPOSE OF THE PROPOSED MARKET PRICE AMENDMENT

The normal course issuer bid exemption set out in paragraph 4.8(3)(c) of MI 62-104 (the **Other Published Markets Exemption**) requires that the value of the consideration paid by the issuer not be in excess of the "market price" at the date of acquisition, as determined in accordance with section 1.11 of MI 62-104. As currently drafted, section 1.11 of MI 62-104 determines "market price" with reference to an average of the closing price, highest and lowest prices, closing bid and ask prices, as applicable, over a preceding 20 business day period. Accordingly, in order to rely on the Other Published Markets Exemption, an issuer would have to acquire securities on a published market other than a designated exchange (each, an **Other Published Market**) at a price representing the applicable average of prices of the securities for the prior 20 business days, and not the current trading price. Given that securities are acquired through the trading system of the applicable Other Published Market at the prevailing market price, it is not clear how this would be possible in practice.

Subsection 1.11(3) of MI 62-104, which applies to normal course purchases made during the currency of a take-over bid, provides an alternative meaning for market price, being the price of the last standard trading unit of securities of that class purchased by a person who was not acting jointly or in concert with the offeror. The application of a "market price" requirement in respect of the Other Published Markets Exemption was first introduced in February 2008. It was the intention that such requirement mirror the requirement for exempt normal course purchases during a take-over bid. Accordingly, the Proposed Market Price Amendment amends subsection 1.11(3) of MI 62-104 so that the alternative meaning of "market price" in that subsection also applies for the purposes of the Other Published Markets Exemption.

LOCAL MATTERS

Annex M to this Notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

REQUEST FOR COMMENTS

We welcome your comments on the Proposed Bid Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions:

1. The Proposed Bid Amendments contemplate the reduction of the minimum deposit period for take-over bids in the event that the offeree board issues a deposit period news release. Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to a deposit period news release and the ability of an offeror to reduce the initial deposit period for its bid as a result of the issuance of a deposit period news release?

2. The Proposed Bid Amendments provide that the minimum deposit period for an outstanding or future take-over bid for an issuer must be at least 35 days if the issuer announces that it has agreed to enter into, or determined to effect, an "alternative transaction". The Proposed Bid Amendments include a definition of "alternative transaction" that is intended to encompass transactions generally involving the acquisition of an issuer or its business. Do you agree with the scope of the definition of "alternative transaction"? If not, please explain why you disagree with the scope and what changes to the definition you would propose.

3. Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to alternative transactions? Does the proposed policy guidance in sections 2.13 and 2.14 of NP 62-203 assist with interpretation of the alternative transaction provisions?

4. The Proposed Bid Amendments include a number of provisions that are specific to partial take-over bids. In particular, the Proposed Bid Amendments contemplate that an offeror making a partial take-over bid is only obligated to take up, at the expiry of the initial deposit period and assuming all pre-conditions to the bid are met, the maximum number of securities it can without contravening the *pro rata* take up requirement (s. 2.32.1(6)). Then, at the expiry of the mandatory 10 day extension period, the offeror must complete the *pro rata* take up obligation in respect of securities previously deposited (but not taken up) and securities deposited during the mandatory 10 day extension period (s. 2.32.1(7)). Would policy guidance concerning the interpretation or application of the Proposed Bid Amendments as they relate to partial take-over bids be useful? If so, please explain.

5. The Proposed Bid Amendments include revisions to the take up and payment and withdrawal right provisions in the take-over bid regime. Do you agree with these proposed changes or foresee any unintended consequences as a result of these changes? In particular, do you agree that there should not be withdrawal rights for securities deposited to a partial take-over bid prior to the expiry of the initial deposit period for so long as they are not taken up until the end of the mandatory 10 day extension period?

6. Are the current time limits set out in subsections 2.17(1) and (3) sufficient to enable directors to properly evaluate an unsolicited take-over bid and formulate a meaningful recommendation to security holders with respect to such bid?

7. Do you anticipate any changes to market activity or the trading of offeree issuer securities during a take-over bid as a result of the Proposed Bid Amendments? If so, please explain.

How to provide your comments

Please provide your comments in writing by June 29, 2015. Please provide your comments in Microsoft Word format.

Please address your submissions to all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
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Please note that all comments received will be made publicly available and posted on the websites of certain securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain CSA jurisdictions requires publication of a summary of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published.

Contents of Annexes

Questions

Please refer your questions to any of the following:

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ANNEX A.1

SUMMARY OF COMMENTS ON CSA PROPOSAL

The following is a general summary of comments received on the CSA Proposal, including comments received that relate to aspects of the Proposed Bid Amendments. The summary does not review comments on specific or technical aspects of the CSA Proposal since the CSA has determined to proceed with the Proposed Bid Amendments as an alternative to that proposal.

The CSA Proposal put forward a framework for the regulation of security holder rights plans adopted by boards of directors of offeree issuers in response to unsolicited bids. Under the proposal, an offeree board could maintain a security holder rights plan if a majority of the equity or voting securities of the offeree issuer (excluding the securities of the offeror and its joint actors) were voted in favour of such plan, either in the face of the unsolicited bid or at the offeree issuer's previous annual meeting.

1. General Comments

We invited comments on whether the CSA Proposal was preferable to the status quo.

We received comments that both supported and disagreed with the proposal.

- Many commenters said that the CSA Proposal was preferable to the status quo. They noted that the current regime has led to inconsistent decisions and the timing of the termination of a security holder rights plan by securities regulators is uncertain.

- Other commenters indicated that the CSA Proposal was not preferable to the status quo as it would discourage bids or prevent bids from going to security holders for consideration, or lead to management entrenchment at the expense of security holders. Many of these commenters felt that shareholders, as owners of a corporation, were best placed to determine what is in their best interest and should be left with the decision to tender their securities to a take-over bid.

2. Appropriate Security Holder Approval Period

The CSA Proposal did not specifically include a proposal for a minimum bid period as contemplated by the Proposed Bid Amendments. However, the CSA Proposal allowed for an approval period of 90 days for security holder rights plans and invited comments on whether the 90-day period was appropriate.

We received the following comments on that proposal:

- Some commenters suggested that a 90-day period was not long enough. They recommended that the period provided to a board of directors to obtain shareholders' approval under the CSA Proposal be increased to 120 days. In their view, the 90-day period could be insufficient to complete the due diligence required in an auction process.

- Other commenters believed that 90 days was too long. These commenters indicated that the proposed 90-day period could result in additional delays and financing costs for offerors, which, in turn, could result in fewer unsolicited take-over bids.

- Several commenters believed that a period of 90 days would ordinarily provide sufficient time for a board of directors of an offeree issuer to seek alternatives to a hostile bid, to obtain the highest reasonably available price for its securities and to assess the offer. They were of the view that a 90 day period would not have a significant effect on the willingness of hostile offerors to make bids.

3. Board Discretion

We asked in the CSA Proposal whether the discretion given to a board of directors under the proposal was appropriate. Some of the views expressed included the following:

- Many commenters agreed that, as under the CSA Proposal, shareholders should have the ultimate decision over whether to maintain a security holder rights plan. They expressed concern that boards may use security holder rights plans, even temporarily, as an entrenchment mechanism.

- Many commenters felt that, in general, the discretion given to boards of directors under the CSA Proposal was appropriate and would afford offeree boards more time to exercise their fiduciary duties. However, a few commenters were concerned that, under the CSA Proposal, a board of directors could maintain a "just say no" security holder rights plan between annual general meetings unless the shareholders requisitioned a special meeting to terminate the rights plan.

- Several commenters stated that the CSA Proposal unduly restricted the board of directors' discretion and did not adequately empower boards of directors. In their view, allowing shareholders to ratify the board of directors' decision to adopt a security holder rights plan by way of shareholder vote did not constitute a sufficiently "hands-off" approach.

4. Structure of Take-over Bids in Canada

We invited comments on whether the CSA Proposal would have any negative impact on the structure of take-over bids in Canada.

Most commenters agreed that the CSA Proposal would not unduly discourage or impose serious impediments to the making of unsolicited bids. They added that, in their view, the CSA Proposal would result in more negotiated bids.

Many commenters indicated that the CSA Proposal would likely lead to more proxy contests, which they anticipated would be time- and resource-consuming for the offeror and the offeree issuer.

Many commenters stated general concerns about the quality of votes obtained under the proxy system in Canada. Consequently, they believed that voting results might not accurately reflect shareholders' views.

5. Role of Securities Regulators

We also invited comments on whether the CSA Proposal would reduce the need for securities regulators to review security holder rights plans through public interest hearings.

Some commenters agreed that the number of hearings might decrease but, in their view, the involvement of securities regulators would continue, albeit in other circumstances.

Some commenters believed that the CSA Proposal would address current concerns relating to arbitrary and inconsistent results from regulatory intervention, while others noted that it was unclear as to what circumstances might engage the public interest jurisdiction of securities regulators under the CSA Proposal.

ANNEX A.2

SUMMARY OF COMMENTS ON AMF PROPOSAL

The following is a general summary of comments received on the AMF Proposal, including comments received that relate to aspects of the Proposed Bid Amendments. The summary does not review comments on specific or technical aspects of the AMF Proposal since the CSA has determined to proceed with the Proposed Bid Amendments as an alternative to the proposal.

1. Minimum Tender Requirement and Mandatory Extension Requirement

The AMF Proposal included a proposed amendment to the take-over bid regime to require that all take-over bids receive tenders from more than 50% of all outstanding securities of the offeree issuer owned or held by persons other than the offeror (the minimum tender requirement). The AMF Proposal also proposed a mandatory 10-day extension of the bid following an announcement that the minimum tender requirement had been met.

Along with this proposal, the AMF invited comments on whether the proposed changes would (i) allow offeree security holders to make a voluntary, undistorted collective decision to sell, and (ii) promote the efficiency of capital markets.

The AMF received a number of comments on the proposed amendments in the AMF Proposal. The following is a general summary of the views expressed by commenters:

- Commenters were generally supportive of adopting these provisions.

- Many commenters were of the view that these provisions would provide security holders with the opportunity to make more informed decisions and would allow offeree security holders to make voluntary, undistorted collective decisions to sell. In their view, this would address the collective action concerns associated with our take-over bid regime and ensure fair treatment of security holders.

- Some commenters indicated that the proposed changes would alleviate the pressure on certain security holders to tender into the bid or to sell their shares in the secondary market for fear of being left in the minority. They also suggested that the proposed changes were akin to security holder approval and increased the legitimacy of the bid process. More specifically, they noted that the minimum tender requirement would act like a referendum among security holders and the 10-day extension of the bid would allow undecided shareholders to tender.

- Some commenters submitted that it is important to level the playing field for all security holders, as only larger companies tend to adopt the “permitted bid” security holder rights plan. The proposed changes reflect elements of the “permitted bid” concept under most security holder rights plans.

- Similar to the bid regime amendments in the AMF Proposal, some commenters suggested that securities regulators mandate that all security holder rights plans contain the terms of the “permitted bid” security holder rights plan, including that a waiver of a security holder rights plan with respect to one bid results in a waiver for all bids.

- Many issuers felt that there are currently regulatory imbalances that unduly favour offerors and that the bid regime amendments included in the AMF Proposal would enhance the efficiency of capital markets by reducing coercion and the pressure to which security holders are subjected.

- Some commenters expressed concern that offeree boards of directors have no real ability to protect offeree issuers from structurally coercive bids and, in particular, from bids that substantially undervalue the offeree issuer. These commenters noted that boards do not have the ability to maintain a security holder rights plan indefinitely in the face of a bid.

- A few commenters argued that the suggestion that the current take-over bid regime is too “offeror friendly” is not supported by empirical evidence. In their view, the current regime appropriately provides security holders with an unrestricted ability to accept a premium bid.

2. Board Discretion

In addition to proposing the minimum tender requirement and the 10-day mandatory extension requirement, the AMF Proposal also contemplated policy changes that would recognize the fiduciary duty of the board of directors of the offeree issuer when responding to an unsolicited bid.

The AMF invited comments on whether giving appropriate deference to directors in the exercise of their fiduciary duty would negatively impact the ability of offeree issuer security holders to tender their securities to an unsolicited take-over bid.

Several commenters were of the view that directors should have a greater ability to fulfill their fiduciary duty in response to a take-over bid.

They voiced the following views:

- The CSA should recognize that boards are constrained by their fiduciary duties and by existing shareholder rights, including rights to submit proposals and to appoint new directors, adding that a proposal that gives priority to shareholders undermines board authority under corporate law.

- The CSA should allow boards of directors the discretion to act in what they determine to be the best interest of the corporation, including the ability to "say no" to a hostile take-over bid.

- Directors can legitimately conclude that an unsolicited offer is not in the corporation's best interests and that alternatives better aligned with the corporation's best interests exist.

Some commenters favoured the shareholder-focused status quo. They found the AMF Proposal unacceptable for the following reasons:

- It would give directors broad discretion to adopt defensive tactics that could prevent security holders from tendering into bids.

- The AMF Proposal could tilt the balance of power too far in favour of the offeree issuer's directors, making hostile take-over bids very difficult to carry out without replacing the offeree board.

Some commenters indicated that security holders generally had the appropriate tools to discipline boards under corporate law. They commented that the right of shareholders to elect and to remove directors, along with their right to sue for breach of fiduciary duty or seek relief under the oppression remedy, provides a powerful check on directorial authority.

However, other commenters did not agree that security holders have the appropriate tools to discipline directors. They took the view that the tools available to security holders had largely been ineffective, as demonstrated by the difficulty pursuing a claim in courts and the fact that the exercise of the shareholders' voting rights to withhold votes does not generally lead to the removal of the director. In their view, it is difficult for minority shareholder voices to be heard given that the shareholder base of many Canadian companies is quite concentrated.

3. Role of securities regulators

Law firms and issuers generally indicated that courts would be an appropriate forum to address disputes regarding defensive tactics, as it is the case in the U.S.

Institutional investors generally expressed concerns with a decreased role for securities regulators, particularly under the AMF Proposal. They commented that securities regulators have a specific mandate, not shared by the courts, to protect the interests of investors; they did not wish to see that mandate or involvement weakened.

ANNEX B

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 62-104 *TAKE-OVER BIDS AND ISSUER BIDS*

1. Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.

2. The title of the Instrument is replaced with "National Instrument 62-104 *Take-Over Bids and Issuer Bids"**.***

3. Section 1.1 is amended

(a) by adding the following definition:

"alternative transaction" means, for an issuer:

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

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

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

(iii) a transaction between the issuer and a subsidiary of the issuer,

(b) a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer, or

(c) a sale, lease or exchange of all or substantially all the property of the issuer other than in the ordinary course of business of the issuer; ***,***

(b) by adding "or***" at the end of paragraph (c) of the definition of "***associate***", and***

(c) by adding the following definitions in alphabetical order:

"deposit period news release" means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 120 days and not less than 35 days that is acceptable to the board of directors of the offeree issuer, expressed as a number of days from the date of the bid;

"initial deposit period" means the period, including any extension, during which securities may be deposited under a take-over bid but does not include a mandatory 10 day extension period or any extension period subsequent to a mandatory 10 day extension period;

"mandatory 10 day extension period" means the 10 day period referred to in paragraph 2.31.1(a);

"partial take-over bid" means a take-over bid for less than all of the class of securities subject to the bid; **.**

4. Subsection 1.11(3) is amended by adding "and subsection 4.8(3)***" after "***section 4.1***".***

5. Section 2.11 is amended by adding the following subsections:

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder to whom paragraph 2.30(2)(a.1) applies.

(5) If an offeror is required to send a notice of change pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change. **.**

6. Section 2.12 is amended

(a) in subsection (1) by adding "reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or***" before "***extension***",***

(b) by adding the following subsections:

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder to whom paragraph 2.30(2)(a.1) applies.

(3.1) If an offeror is required to send a notice of variation pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of variation. **,**

(c) in subsection (4) by replacing "and (3)***" with "***, (3) and (3.1)***", and adding "***, other than an extension in respect of the mandatory 10 day extension period,***" before "***resulting***",***

(d) in subsection (5) by deleting "a take-over bid or***", and***

(e) by adding the following subsection:

(6) A variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, must not be made after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1. **.**

7. Subsection 2.17(3) is amended by replacing "period during which securities may be deposited under the bid***" with "***initial deposit period***".***

8. Section 2.26 is amended

(a) in subsection (1) by deleting "a take-over bid or***", and***

(b) by repealing subsection (4).

9. The Instrument is amended by adding the following section:

Proportionate take up and payment – partial take-over bids

2.26.1 (1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound 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) 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. **.**

10. Section 2.28 is amended

(a) by deleting "a take-over bid or***", and***

(b) by adding "a minimum deposit period of***" before "***at least***".***

11. The Instrument is amended by adding the following sections:

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 120 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

(a) the offeror, prior to the issuance of the deposit period news release referred to in subsection (1), has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

(b) the offeror, subsequent to the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:

(i) the date of expiry of the take-over bid referred to in subsection (1),

(ii) the date of expiry of a take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an alternative transaction, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

(a) the offeror, prior to the issuance of the news release, has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

(b) the offeror, subsequent to the issuance of the news release, commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:

(i) the date of completion or abandonment of the alternative transaction,

(ii) the date of expiry of a take-over referred to in paragraph (a). .

12. Section 2.29 is amended by deleting "a take-over bid or***".***

13. The Instrument is amended by adding the following section:

Prohibition on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following conditions are satisfied:

(a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,

(b) all terms and conditions of the bid have been complied with or waived,

(c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn. .

14. Section 2.30 is amended

(a) by adding the following subsection:

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder may not withdraw securities that have been deposited under the bid before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

(a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and

(b) ending at the time the offeror becomes obligated to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6) under subsection 2.32.1(7) or (8), as applicable. **,**

(b) in subsection (2) by replacing "The right of withdrawal under paragraph (1)(b) does not apply***" with "***Despite paragraph (1)(b), a security holder may not withdraw securities that have been deposited under the take-over bid or issuer bid***",***

(c) by adding the following paragraph:

(a.1) in the case of a partial take-over bid, the securities were deposited under the bid before the expiry of the initial deposit period and were not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or **,**

(d) in paragraph (2)(b) by replacing "one or both***" with "***any***",***

(e) in subparagraph (2)(b)(i) by replacing "the bid***" with "***a take-over bid or issuer bid***",***

(f) in subparagraph (2)(b)(ii) by replacing "the bid***" with "***a take-over bid or issuer bid***", and by adding "***;***" at the end of the subparagraph, and***

(g) in paragraph (2)(b) by adding the following subparagraph:

(iii) a variation in the terms of a take-over bid subsequent to the expiry of the initial deposit period consisting of either an increase in consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation. **.**

15. Section 2.31 is amended

(a) by adding "not***" before "***be counted***",***

(b) by replacing "a condition as to the minimum number of securities to be deposited under a take-over bid has been fulfilled, but***" with "***the minimum tender requirement in paragraph 2.29.1(c) is satisfied and***", and***

(c) by replacing "the bid***" with "***the take-over bid***".***

16. The Instrument is amended by adding the following sections:

Mandatory 10 day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a bid pursuant to subsection 2.32.1(1), the offeror must

(a) extend the period during which securities may be deposited under the bid for a period of 10 days, and

(b) promptly issue and file a news release disclosing the following

(i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,

(ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,

(iii) that the period during which securities may be deposited under the bid is extended for the mandatory 10 day extension period, and

(iv) in the case of a take-over bid that

(A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up, or

(B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event not later than one day after the expiry of the mandatory 10 day extension period.

Time limit on extension – partial take-over bids

2.31.2 A partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period. **.**

17. Section 2.32 is amended by deleting "a take-over bid or***" wherever the expression occurs.***

18. The Instrument is amended by adding the following section:

Obligation to take up and pay for deposited securities – take-over bids

2.32.1 (1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period,

(a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed,

(b) all the terms and conditions of the take-over bid have been complied with or waived, and

(c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over 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) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10 day extension period, or an extension period subsequent to the mandatory extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid at any time subsequent to the expiry of the mandatory 10 day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror 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.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is only required to take up, by the time specified in that subsection, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the mandatory 10 day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10 day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b). **.**

19. Section 6.1 is amended by renumbering it as subsection 6.1(1) and by adding the following subsection:

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption. **.**

20. Section 6.2 is amended by renumbering it as subsection 6.2(1) and by adding the following subsection:

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision. **.**

21. Form 62-104F1 is amended by replacing "Multilateral***" with "***National***" in paragraph (a) of the General Provisions in Part 1.***

22. Form 62-104F1 is amended by adding the following item:

Item 9.1 Minimum Tender Requirement and Mandatory Extension Period

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

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

23. Form 62-104F2 is amended by replacing "Multilateral***" with "***National***" in paragraph (a) of the General Provisions in Part 1.***

24. Form 62-104F3 is amended by replacing "Multilateral***" with "***National***" in paragraph (a) of the General Provisions in Part 1.***

25. Form 62-104F4 is amended by replacing "Multilateral***" with "***National***" in paragraph (a) of the General Provisions in Part 1.***

26. Form 62-104F4 is amended by replacing "revison***" with "***revision***" in item 14.***

27. Form 62-104F5 is amended by replacing "Multilateral***" with "***National***" in paragraph (a) of the General Provisions in Part 1.***

28. Form 62-104F5 is amended by adding the following paragraph under subsection (2) of item 3:

(a.1) if one of the terms referred to in paragraph (a) is the mandatory 10 day extension period required pursuant to paragraph 2.31.1(a) of the Instrument, the number of securities deposited under the take-over bid and not withdrawn as at the date of the variation, **.**

29. This Instrument comes into force on [●].

ANNEX C

BLACKLINE EXTRACTS OF MI 62-104 SHOWING PROPOSED AMENDMENTS

~~MULTILATERAL~~NATIONAL INSTRUMENT 62-104 *TAKE-OVER BIDS AND ISSUER BIDS*

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~~MULTILATERAL~~NATIONAL 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*;

"alternative transaction" means, for an issuer;

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

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

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

(iii) a transaction between the issuer and a subsidiary of the issuer,

(b) a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer, or

(c) a sale, lease or exchange of all or substantially all the property of the issuer other than in the ordinary course of business of the issuer;

"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, or

(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*;

"**deposit period news release**" means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 120 days and

not less than 35 days that is acceptable to the board of directors of the offeree issuer, expressed as a number of days from the date of the bid;

"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;

"initial deposit period" means the period, including any extension, during which securities may be deposited under a take-over bid but does not include a mandatory 10 day extension period or any extension period subsequent to a mandatory 10 day extension period;

"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;

"mandatory 10 day extension period" means the 10 day period referred to in paragraph 2.31.1(a);

"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;

"partial take-over bid" means a take-over bid for less than all of the class of securities subject to the bid;

"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,~~4.1 and subsection 4.8(3), 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.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder to whom paragraph 2.30(2)(a.1) applies.

(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.

(5) If an offeror is required to send a notice of change pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change.

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 reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or 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.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder to whom paragraph 2.30(2)(a.1) applies.

(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.

(3.1) If an offeror is required to send a notice of variation pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of variation.

(4) Subsections (1), (3) and (~~3~~3.1) 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, other than an extension in respect of the mandatory 10 day extension period, 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.

(6) A variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, must not be made after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1.

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 initial deposit 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 – issuer bids

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.

Proportionate take up and payment – partial take-over bids

2.26.1 (1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound 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.

(42) 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 – issuer bids

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

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 120 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

(a) the offeror, prior to the issuance of the deposit period news release referred to in subsection (1), has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

(b) the offeror, subsequent to the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:

(i) the date of expiry of the take-over bid referred to in subsection (1),

(ii) the date of expiry of a take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an alternative transaction, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

(a) the offeror, prior to the issuance of the news release, has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

(b) the offeror, subsequent to the issuance of the news release, commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:

(i) the date of completion or abandonment of the alternative transaction,

(ii) the date of expiry of a take-over bid referred to in paragraph (a).

Prohibition on take up ~~–~~ issuer bids

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.

Prohibition on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following conditions are satisfied:

(a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,

(b) all terms and conditions of the bid have been complied with or waived,

(c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

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.

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder may not withdraw securities that have been deposited under the bid before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

(a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and

(b) ending at the time the offeror becomes obligated to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6) under subsection 2.32.1(7) or (8), as applicable.

(2) ~~The right of withdrawal under~~Despite paragraph (1)(b) ~~does not apply~~, a security holder may not withdraw securities that have been deposited under the take-over bid or issuer bid if

(a) the securities have been taken up by the offeror before the date of the notice of change or notice of variation,

(a.1) in the case of a partial take-over bid, the securities were deposited under the bid before the expiry of the initial deposit period and were not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or

(b) ~~one or both~~any of the following circumstances occur:

(i) a variation in the terms of ~~the~~a take-over bid or issuer 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~~a take-over bid or issuer 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~~;~~.

(iii) a variation in the terms of a take-over bid subsequent to the expiry of the initial deposit period consisting of either an increase in consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation.

(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 not 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~~the minimum tender requirement in paragraph 2.29.1(c) is satisfied and must not reduce the number of securities the offeror is bound to take up under the take-over bid.

Mandatory 10 day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a bid pursuant to subsection 2.32.1(1), the offeror must

(a) extend the period during which securities may be deposited under the bid for a period of 10 days, and

(b) promptly issue and file a news release disclosing the following

(i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,

(ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,

(iii) that the period during which securities may be deposited under the bid is extended for the mandatory 10 day extension period, and

(iv) in the case of a take-over bid that

(A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up, or

(B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event not later than one day after the expiry of the mandatory 10 day extension period.

Time limit on extension – partial take-over bids

2.31.2 A partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period.

Obligation to take up and pay for deposited securities – issuer bids

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.

Obligation to take up and pay for deposited securities – take-over bids

2.32.1 (1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period,

(a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed,

(b) all the terms and conditions of the take-over bid have been complied with or waived, and

(c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over 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) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10 day extension period, or an extension period subsequent to the mandatory extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid at any time subsequent to the expiry of the mandatory 10 day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror 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.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is only required to take up, by the time specified in that subsection, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the mandatory 10 day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10 day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

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

[…]

PART 6: EXEMPTIONS

Exemption — general

6.1 (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.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

Exemption — collateral benefit

6.2 (1) 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.

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision.

[…]

ANNEX D

PROPOSED CHANGES TO
NATIONAL POLICY 62-203 *TAKE-OVER BIDS AND ISSUER BIDS*

1. The changes proposed to National Policy 62-203 Take-Over Bids and Issuer Bids are set out in this Schedule.

2. Section 1.1 is changed

(a) by replacing "Multilateral***" with "***National***",***

(b) by deleting ", except Ontario, and has been implemented as a rule or regulation in all jurisdictions, except Ontario. Part XX of the *Securities Act* (Ontario) (the Ontario Act) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (the Ontario Rule) govern take-over bids and issuer bids in Ontario only.***", and***

(c) by replacing "This Policy, the Instrument, the Ontario Act and the Ontario Rule are collectively***" with "***This Policy and the Instrument are together***".***

3. Section 2.1 is changed by adding ":" after "objectives***".***

4. Section 2.2 is changed by deleting, in the first paragraph, "in section 1.1 of the Instrument and subsection 89(1) of the Ontario Act***" and "***and subsection 89(1) of the Ontario Act***".***

5. Section 2.7 is changed by deleting "or clause 4.1(1)(b)(ii)(B) of the Ontario Rule***".***

6. The following sections are added:

2.10 Take-over bid deposit period – The Bid Regime requires all non-exempt take-over bids to remain open for a minimum deposit period of 120 days (section 2.28.1 of the Instrument). The 120 day minimum deposit period applies except in the following circumstances:

(a) the offeree issuer states in a news release a shorter deposit period for the bid of not less than 35 days that is acceptable to the offeree issuer board (section 2.28.2 of the Instrument); or

(b) the issuer issues a news release that it has agreed to enter into, or has determined to effect, a specified alternative transaction (section 2.28.3 of the Instrument).

Where a shorter minimum deposit period applies, an offeror that has not yet commenced its take-over bid can avail itself of the shorter minimum deposit period by establishing an initial deposit period of at least the number of days specified in the deposit period news release. In the case of an alternative transaction, section 2.28.3 of the Instrument permits an offeror to establish an initial deposit period of as few as 35 days.

If an offeror has already commenced a take-over bid when a deposit period news release is issued or an alternative transaction is announced, sections 2.28.2 and 2.28.3 of the Instrument do not require the offeror to shorten the deposit period for its bid, nor do they apply to automatically shorten the initial deposit period of its bid. To avail itself of the permitted shorter initial deposit period, the offeror must vary its take-over bid in accordance with section 2.12 of the Instrument to reflect the earlier expiry date for the bid. As a consequence, the offeror must allow securities to be deposited under its bid for at least 10 days after the notice of variation even if the offeror's take-over bid would otherwise have already satisfied the shorter minimum deposit period.

2.11 Deposit period news release – A "deposit period news release" is defined, in part, as a news release issued by an offeree issuer in respect of a "proposed or commenced" take-over bid. A take-over bid is "proposed" if a person publicly announces that it intends to make a take-over bid for the securities of an offeree issuer. An anticipated but unannounced take-over bid or possible future take-over bid would not constitute a "proposed" take-over bid within the meaning of this definition.

A deposit period news release will state an initial deposit period for a take-over bid acceptable to the board of directors of the offeree issuer of not more than 120 days and not less than 35 days. A deposit period news release must describe the acceptable minimum deposit period by referring to a number of days from the date of the bid and not to specific calendar dates in order to facilitate the generic application of the shorter minimum deposit period to multiple take-over bids.

2.12 **Multiple deposit period news releases** – The Bid Regime does not restrict an offeree issuer from issuing multiple deposit period news releases in respect of a take-over bid or contemporaneous bids. While likely rare, we anticipate that there may be circumstances where an offeree issuer determines to further shorten a previously stated acceptable initial deposit period for a take-over bid or determines to state an acceptable shorter initial deposit period for a take-over bid after it had previously stated an acceptable initial deposit period for another take-over bid. In the event that an offeree issuer issues multiple deposit period news releases, the provisions in section 2.28.2 of the Instrument should be interpreted such that the shortest initial deposit period stated in a deposit period news release applies to all take-over bids that are subject to section 2.28.2 of the Instrument.

2.13 **Alternative transaction** – Section 2.28.3 of the Instrument provides that, in certain circumstances, the initial deposit period for a bid must be at least 35 days from the date of the bid if an issuer issues a news release announcing that it has "agreed to enter into, or determined to effect," an alternative transaction. An agreement to enter into an alternative transaction should be interpreted as having occurred when the issuer first makes a legally binding commitment to proceed with the alternative transaction, subject to conditions such as security holder approval.

Where an issuer does not technically negotiate an alternative transaction with another party, such as in the case of a share consolidation, a determination to effect the alternative transaction should be interpreted as having occurred when the issuer's board of directors decides to proceed with the alternative transaction, subject to conditions.

Paragraph (b) of the definition of "alternative transaction" refers to "a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer." This refers to the acquisition of all of the issuer and not merely the acquisition of a control position.

2.14 **Alternative transaction – reliance on issuer news release** – Section 2.28.3 of the Instrument provides for the reduction of the initial deposit period for a take-over bid to 35 days if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an alternative transaction. Section 2.28.3 of the Instrument applies in respect of any transaction announced by an issuer that may reasonably be interpreted to be an "alternative transaction". An issuer that does not consider a transaction to be an alternative transaction for the purposes of section 2.28.3 of the Instrument should state that fact in its news release in respect of the transaction only if it believes that the transaction could be erroneously interpreted as an "alternative transaction".

2.15 **Change in information –** Subsection 2.11(5) of the Instrument provides that the initial deposit period for a take-over bid must not expire before 10 days after the date of a notice of change. If an offeror is required to send a notice of change in circumstances where the initial deposit period would expire less than 10 days from the date of the notice of change then the offeror would be obliged to further extend the initial deposit period to ensure that at least 10 days have elapsed before the expiry of the initial deposit period. **.**

7. These changes become effective on [●].

ANNEX E

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 *PASSPORT SYSTEM*

1. Multilateral Instrument 11-102 Passport System is amended by this Instrument.

2. Appendix D is amended by replacing the following:

Take-over bids and issuer bid requirements (TOB/IB) – Restrictions on acquisitions during take-over bid	s. 2.2(1) of MI 62-104	s. 93.1(1)
TOB/IB – Restrictions on acquisitions during issuer bid	s. 2.3(1) of MI 62-104	s. 93.1(4)
TOB/IB – Restrictions on acquisitions before take-over bid	s. 2.4(1) of MI 62-104	s. 93.2(1)
TOB/IB – Restrictions on acquisitions after bid	s. 2.5 of MI 62-104	s. 93.3(1)
TOB/IB – Restrictions on sales during formal bid	s. 2.7(1) of MI 62-104	s. 97.3(1)
TOB/IB – Duty to make bid to all security holders	s. 2.8 of MI 62-104	s. 94
TOB/IB – Commencement of bid	s. 2.9 of MI 62-104	s. 94.1(1) and (2)
TOB/IB – Offeror's circular	s. 2.10 of MI 62-104	s. 94.2(1) – (4) of *Securities Act* and s. 3.1 of OSC Rule 62-504
TOB/IB – Change in information	s. 2.11(1) of MI 62-104	s. 94.3(1)
TOB/IB – Notice of change	s. 2.11(4) of MI 62-104	s. 94.3(4) of *Securities Act* and s. 3.4 of OSC Rule 62-504
TOB/IB – Variation of terms	s. 2.12(1) of MI 62-104	s.94.4(1)
TOB/IB – Notice of variation	s. 2.12(2) of MI 62-104	s. 94.4(2) of *Securities Act* and s. 3.4 of OSC Rule 62-504
TOB/IB – Expiry date of bid if notice of variation	s. 2.12(3) of MI 62-104	s. 94.4(3)
TOB/IB – No variation after expiry	s. 2.12(5) of MI 62-104	s. 94.4(5)
TOB/IB – Filing and sending notice of change or notice of variation	s. 2.13 of MI 62-104	s. 94.5
TOB/IB – Change or variation in advertised take-over bid	s. 2.14(1) of MI 62-104	s. 94.6(1)
TOB/IB – Consent of expert – bid circular	s. 2.15(2) of MI 62-104	s. 94.7(1)
TOB/IB – Delivery and date of bid documents	s. 2.16(1) of MI 62-104	s. 94.8(1)
TOB/IB – Duty to prepare and send directors' circular	s. 2.17 of MI 62-104	s. 95(1)–(4) of *Securities Act* and s. 3.2 of OSC Rule 62-504

TOB/IB – Notice of change	s. 2.18 of MI 62-104	s. 95.1(1) and (2) of *Securities Act* and s. 3.4 of OSC Rule 62-504
TOB/IB – Filing directors' circular or notice of change	s. 2.19 of MI 62-104	s. 95.2
TOB/IB – Change in information in director's or officer's circular or notice of change	s. 2.20(2) of MI 62-104	s. 96(2)
TOB/IB – Form of director's or officer's circular	s. 2.20(3) of MI 62-104	s. 96(3) of *Securities Act* and s. 3.3 of OSC Rule 62-504
TOB/IB – Send director's or officer's circular or notice of change to securityholders	s. 2.20(5) of MI 62-104	s. 96(5)
TOB/IB – File and send to offeror director's or officer's circular or notice of change	s. 2.20(6) of MI 62-104	s. 96(6)
TOB/IB – Form of notice of change for director's or officer's circular	s.2.20(7) of MI 62-104	s.96(7) of *Securities Act* and s.3.4 of OSC Rule 62-504
TOB/IB – Consent of expert, directors' circular, etc.	s. 2.21 of MI 62-104	s. 96.1
TOB/IB – Delivery and date of offeree issuer's documents	s. 2.22(1) of MI 62-104	s. 96.2(1)
TOB/IB – Consideration	s. 2.23(1) of MI 62-104	s. 97(1)
TOB/IB – Variation of consideration	s. 2.23(3) of MI 62-104	s. 97(3)
TOB/IB – Prohibition against collateral agreements	s. 2.24 of MI 62-104	s. 97.1(1)
TOB/IB – Proportionate take up and payment	s. 2.26(1) of MI 62-104	s. 97.2(1)
TOB/IB – Financing arrangements	s. 2.27(1) of MI 62-104	s. 97.3(1)
TOB/IB – Minimum deposit period	s. 2.28 of MI 62-104	s. 98(1)
TOB/IB – Prohibition on take up	s. 2.29 of MI 62-104	s. 98(2)
TOB/IB – Obligation to take up and pay for deposited securities	s. 2.32 of MI 62-104	s. 98.3
TOB/IB – Return of deposited securities	s. 2.33 of MI 62-104	s. 98.5
TOB/IB – News release on expiry of bid	s. 2.34 of MI 62-104	s. 98.6
TOB/IB – Language of bid documents	s. 3.1 of MI 62-104	n/a
TOB/IB – Filing of documents by offeror	s. 3.2(1) of MI 62-104	s. 98.7 of *Securities Act* and s. 5.1(1) of OSC Rule 62-504
TOB/IB – Filing of documents by offeree issuer	s. 3.2(2) of MI 62-104	s. 5.1(2) of OSC Rule 62-504
TOB/IB – Time period for filing	s. 3.2(3) of MI 62-104	s. 5.1(3) of OSC Rule 62-504
TOB/IB – Filing of subsequent agreement	s. 3.2(4) of MI 62-104	s. 5.1(4) of OSC Rule 62-504
TOB/IB – Certification of bid circulars	s. 3.3(1) of MI 62-104	s. 99(1)

TOB/IB – All directors and officers sign	s. 3.3(2) of MI 62-104	s. 99(2)
TOB/IB – Certification of directors' circular	s. 3.3(3) of MI 62-104	s. 99(3)
TOB/IB – Certification of individual director's or officer's circular	s. 3.3(4) of MI 62-104	s. 99(4)
TOB/IB – Obligation to provide security holder list	s. 3.4(1) of MI 62-104	s. 99.1(1)
TOB/IB – Application of Canada Business Corporations Act	s. 3.4(2) of MI 62-104	s. 99.1(2)
TOB/IB – Early Warning	s. 5.2 of MI 62-104	s. 102.1(1) – (4) of *Securities Act* and s. 7.1 of OSC Rule 62-504
TOB/IB – Acquisitions during bid	s. 5.3 of MI 62-104	s. 102.2(1) and (2) of *Securities Act* and s. 7.2(1) of OSC Rule 62-504
TOB/IB – Copies of news release and report	s. 5.5 of MI 62-104	s. 7.2(3) of OSC Rule 62-504

with the following:

Take-over bid and issuer bid requirements	NI 62-104

3. This Instrument comes into force on [●].

ANNEX F

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 13-102 *SYSTEM FEES FOR SEDAR AND NRD*

1. Multilateral Instrument 13-102 System Fees for SEDAR and NRD is amended by this Instrument.

2. Subsection 1(1) is amended

(a) by replacing the definition of "issuer bid***" with the following:***

"issuer bid" means an issuer bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies; ***, and***

(b) by replacing the definition of "take-over bid***" with the following:***

"take-over bid" means a take-over bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies. ***.***

3. This Instrument comes into force on [●].

ANNEX G

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 43-101 *STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS*

1. National Instrument 43-101 Standards of Disclosure for Mineral Projects is amended by this Instrument.

2. Section 1.1 is amended by adding the following definition:

"initial deposit period" has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*. **.**

3. Subparagraph 4.2(5)(a)(ii) is amended by replacing "expiry of the take-over bid***" with "***the expiry of the initial deposit period***".***

4. This Instrument comes into force on [●].

ANNEX H

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 51-105 *ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS*

1. Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.

2. Section 16 is amended by replacing "Multilateral***" with "***National***".***

3. This Instrument comes into force on [●].

ANNEX I

PROPOSED CHANGES TO
COMPANION POLICY 55-104CP *INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS*

1. The changes proposed to Companion Policy 55-104CP Insider Reporting Requirements and Exemptions are set out in this Schedule.

2. Subsection 3.2(3) is changed

(a) by replacing "Multilateral***" with "***National***", and***

(b) by deleting "and in Ontario, subsection 90(1) of the Ontario Act***".***

3. These changes become effective on [●].

ANNEX J

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

1. Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is amended by this Instrument.

2. Section 1.1 is amended

(a) by replacing "Multilateral***" with "***National***" and deleting "***, and in Ontario, a formal take-over bid or formal issuer bid as defined in section 89(1) of the *Securities Act*" in the definition of "***bid***",***

(b) by replacing "Multilateral***" with "***National***" and deleting "***, and in Ontario, section 89(1) of the *Securities Act*" in the definition of "***issuer bid***",***

(c) by replacing "Multilateral***" with "***National***" and deleting "***and in Ontario, section 91 of the *Securities Act*,***" in the definition of "***joint actors***",***

(d) by replacing "Multilateral***" with "***National***" wherever the expression occurs, deleting "***and in Ontario, subsections 1.3 (1), (2) and (3) of Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids*,***" and deleting "***and in Ontario, subsections 1.3 (1), (2) and (3) of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*,***" in the definition of "***market capitalization***",***

(e) by replacing "Multilateral***" with "***National***" and deleting "***, and in Ontario, section 89(1) of the *Securities Act*" in the definition of "***offeree issuer***",***

(f) by replacing "Multilateral***" with "***National***" and deleting "***, and in Ontario, section 89(1) of the *Securities Act*" in the definition of "***offeror***", and***

(g) by replacing "Multilateral***" with "***National***" and deleting "***, and in Ontario, section 89(1) of the *Securities Act*" in the definition of "***take-over bid***".***

3. Subsection 1.6(2) is amended

(a) by replacing "the following provisions apply:***" with "***the provisions of section 1.8 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* apply.***",***

(b) by repealing paragraph 1.6(2)(a), and

(c) by repealing paragraph 1.6(2)(b).

4. Paragraph 2.2(1)(d) is amended

(a) by replacing "Multilateral***" with "***National***", and***

(b) by deleting "and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*,***".***

5. Paragraph 4.2(3)(a) is amended

(a) by replacing "Multilateral***" with "***National***", and***

(b) by deleting "and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*,***".***

6. Paragraph 5.3(3)(a) is amended

(a) by replacing "Multilateral***" with "***National***", and***

(b) by deleting "and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 *Take-Over Bids and Issuer Bids*,***".***

7. Section 6.10 is amended

(a) by replacing "Multilateral***" with "***National***", and***

(b) by deleting "and in Ontario, sections 94.7 and 96.1 of the *Securities Act*,***".***

8. This Instrument comes into force on [●].

ANNEX K

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

1. The changes proposed to Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions are set out in this Schedule.

2. Section 4.1 is changed by replacing "Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form 62-104F1 *Take-Over Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F1 *Take-Over Bid Circular* of OSC Rule 62-504 *Take Over Bids and Issuer Bids*, and by Form 62-104F2 *Issuer Bid Circular* of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, and in Ontario, Form 62-504F2 *Issuer Bid Circular* of OSC Rule 62-504 Take Over Bids and Issuer Bids, appropriately modified. In our view, Form 62-104F2 and in Ontario, Form 62-504F2, disclosure would generally include, in addition to Form 62-104F1 and in Ontario, Form 62-504F1, disclosure,***" with "***For an insider bid, in addition to the disclosure required by Form 62-104F1 *Take-Over Bid Circular* of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, subsection 2.2(1)(d) of the Instrument requires the disclosure required by Form 62-104F2 *Issuer Bid Circular* of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, appropriately modified. In our view, Form 62-104F2 disclosure would generally include***".***

3. Section 4.2 is changed by deleting ", and in Ontario, Form 62-504F2,***" wherever the expression occurs.***

4. These changes become effective on [●].

ANNEX L

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 62-103 *THE EARLY WARNING SYSTEM*
AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES

1. National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues is amended by this Instrument.

2. Subsection 1.1(1) is amended

(a) by replacing "MI***" with "***NI***" and deleting "***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)***" in the definition of "***associate***",***

(b) by replacing "MI***" with "***NI***" and deleting "***and, in Ontario, subsections 102.1(1) and 102.1(2) of the *Securities Act* (Ontario)***" in the definition of "***early warning requirements***",***

(c) by replacing the definition of "formal bid***" with the following:***

"formal bid" means a take-over bid or issuer bid made in accordance with Part 2 of NI 62-104; **,**

(d) by repealing the definition of "MI 62-104***",***

(e) by replacing "MI***" with "***NI***" and deleting "***and, in Ontario, subsection 102.1(3) of the *Securities Act* (Ontario)***" in the definition of "***moratorium provisions***",***

(f) by adding the following definition:

"NI 62-104" means National Instrument 62-104 *Take-Over Bids and Issuer Bids;* **,**

(g) by replacing "MI***" with "***NI***" and deleting "***and, in Ontario, subsection 89(1) of the *Securities Act* (Ontario)***" in the definition of "***offeror***", and***

(h) by replacing "MI***" with "***NI***" and deleting "***and, in Ontario, subsection 89(1) of the *Securities Act* (Ontario)***" in the definition of "***offeror's securities***".***

3. Appendix D is amended

(a) by replacing "MI 62-104***" with "***NI 62-104***" wherever the expression occurs, and***

(b) by replacing "Subsections 1(5) and 1(6) and sections 90 and 91 of the *Securities Act* (Ontario)***" with "***Subsections 1(5) and 1(6) of the *Securities Act* (Ontario) and sections 1.8 and 1.9 of NI 62-104***".***

4. This Instrument comes into force on [●].

ANNEX M

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION

NOTICE AND REQUEST FOR COMMENT

PROPOSED ADOPTION OF
NATIONAL INSTRUMENT 62-104 *TAKE-OVER BIDS AND ISSUER BIDS*

AND

PROPOSED REPEAL OF
ONTARIO SECURITIES COMMISSION RULE 62-504 *TAKE-OVER BIDS AND ISSUER BIDS*

AND

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 13-502 *FEES*,
ONTARIO SECURITIES COMMISSION RULE 14-501 *DEFINITIONS*,
ONTARIO SECURITIES COMMISSION RULE 48-501
***TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS*,**
ONTARIO SECURITIES COMMISSION RULE 71-801
***IMPLEMENTING THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM*,**
ONTARIO SECURITIES COMMISSION RULE 71-802 *IMPLEMENTING NATIONAL INSTRUMENT 71-102 CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS*, AND
ONTARIO SECURITIES COMMISSION RULE 91-502 *TRADES IN RECOGNIZED OPTIONS*

March 31, 2015

1. INTRODUCTION

The Canadian Securities Administrators (the **CSA**) are proposing amendments to the regime governing the conduct of take-over bids, including any related consequential amendments and changes to rules and policies (collectively, the **Proposed Bid Amendments**). The Proposed Bid Amendments are described in the CSA Notice and Request for Comment (the **CSA Notice**) to which this Ontario Securities Commission (the **Commission** or **we**) notice is appended.

Currently in Ontario, the regime governing the conduct of take-over bids and issuer bids is set out in Part XX of the *Securities Act* (Ontario) (the **Act**) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (**Rule 62-504**, together with the Act, the **Ontario Bid Regime**). In all other Canadian jurisdictions, a "platform" approach is taken with Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) containing the detailed take-over bid and issuer bid provisions, rather than having these provisions set out in statutes. The Ontario Bid Regime and MI 62-104 are substantively the same.

We are proposing to adopt MI 62-104, as amended by the Proposed Bid Amendments and a technical amendment to the meaning of "market price" as it relates to securities acquired pursuant to a normal course issuer bid made on a published market other than a designated exchange in reliance on the exemption set out in paragraph 4.8(3)(c) of MI 62-104 (such amended instrument, **Proposed NI 62-104**). Adoption of Proposed NI 62-104 in Ontario would eliminate bifurcation as between the Ontario Bid Regime and MI 62-104 and streamline the take-over bid and issuer bid regime in a single, harmonized instrument that applies across all jurisdictions in Canada.

In order to adopt Proposed NI 62-104 in Ontario, we intend to seek legislative amendments to remove the detailed take-over bid provisions from Part XX of the Act and include general "platform provisions" in their place (the **Legislative Proposals**). At this time, the Ontario government has not reviewed the Legislative Proposals and has made no decision to proceed with them. Accordingly, the Legislative Proposals are subject to change as a result of the consultation process and as a result of review by the Ontario government. They will only become law if they are enacted by the Legislative Assembly of Ontario.

The adoption of Proposed NI 62-104 in Ontario would also require consequential amendments to a number of rules to reflect the application of Proposed NI 62-104 across all Canadian jurisdictions (the **Consequential Harmonization Amendments**, and together with the Proposed Bid Amendments, the **Proposed CSA Amendments**). The Consequential Harmonization Amendments are described in the CSA Notice.

The purpose of this Commission notice is to supplement the CSA Notice and to request comment on the adoption of Proposed NI 62-104, the repeal of Rule 62-504, and the consequential amendments and/or changes to the following Ontario-specific rules

(such consequential amendments, together with the repeal of Rule 62-504, the **Proposed Consequential Ontario Amendments**):

- Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**);
- Ontario Securities Commission Rule 14-501 *Definitions* (**Rule 14-501**);
- Ontario Securities Commission Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (**Rule 48-501**);
- Ontario Securities Commission Rule 71-801 *Implementing the Multijurisdictional Disclosure System* (**Rule 71-801**);
- Ontario Securities Commission Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**Rule 71-802**); and
- Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* (**Rule 91-502**).

2. REQUEST FOR PUBLIC COMMENT

(a) Proposed CSA Amendments

Please refer to the CSA Notice requesting comment on the Proposed CSA Amendments.

(b) Proposed Ontario Amendments

The Commission is publishing the following for a 90-day comment period (collectively, the **Proposed Ontario Amendments**):

- the adoption of Proposed NI 62-104;
- the repeal of Rule 62-504;
- proposed amendments to Rule 13-502;
- proposed amendments to Rule 14-501;
- proposed amendments to Rule 48-501;
- proposed amendments to Rule 71-801;
- proposed amendments to Rule 71-802;
- proposed amendments to Rule 91-502; and
- proposed amendments to sections 43, 248, and 252 of Regulation 1015 of the Act.

3. SCHEDULES

Schedule 1 Proposed NI 62-104

Schedule 2 Repeal of Rule 62-504

Schedule 3 Proposed amendments to Rule 13-502

Schedule 4 Proposed amendments to Rule 14-501

Schedule 5 Proposed amendments to Rule 48-501

Schedule 6 Proposed amendments to Rule 71-801

Schedule 7 Proposed amendments to Rule 71-802

Schedule 8 Proposed amendments to Rule 91-502

4. SUBSTANCE AND PURPOSE OF PROPOSED CHANGES

(a) Proposed CSA Amendments

Please refer to the CSA Notice for a discussion of the substance and purpose of the Proposed CSA Amendments.

(b) Proposed Ontario Amendments

The current requirements governing the conduct of take-over bids and issuer bids in the Ontario Bid Regime are substantively the same as the requirements in MI 62-104.

The adoption of Proposed NI 62-104 in Ontario and the repeal of Rule 62-504 would eliminate bifurcation as between the Ontario Bid Regime and MI 62-104 and streamline the take-over bid and issuer bid regime in a single, harmonized national instrument.

The Proposed Consequential Ontario Amendments update section and instrument references to reflect the adoption of Proposed NI 62-104 by Ontario, and accordingly, its application across all Canadian jurisdictions.

The Commission also proposes to amend the following provisions of Regulation 1015 of the Act so that they refer to the corresponding provisions and/or set out the meaning expressed, as applicable, in Proposed NI 62-104:

- sections 43 and 248; and
- subsection 252(2).

5. AUTHORITY – ONTARIO

The following provisions of the Act provide the Commission with the authority to make the Proposed CSA Amendments and the Proposed Ontario Amendments, subject to the Legislative Proposals being enacted by the Legislative Assembly of Ontario and proclaimed into force:

- Paragraph 143(1)28 authorizes the Commission to make rules regulating take-over bids, issuer bids, insider bids, going-private transactions, business combinations, and related party transactions;
- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents. Paragraph 143(1)39.1 authorizes the Commission to make rules governing the approval of any document described in paragraph 143(1)39; and
- Subsection 143(3) authorizes the Commission to, subject to the approval of the Minister, concurrently with making a rule, make a regulation that amends or revokes any provision of a regulation made by the Lieutenant Governor in Council under the Act that in the opinion of the Commission is necessary or advisable to effectively implement the rule.

6. ANTICIPATED COSTS AND BENEFITS

(a) Proposed CSA Amendments

The Commission believes that the Proposed CSA Amendments will, when implemented, yield benefits and reduce costs to market participants for the reasons discussed below. Additionally, a further discussion of the expected impacts of adopting the Proposed Bid Amendments is set out in the “Anticipated Impact of Proposed Bid Amendments” section of the CSA Notice.

In general, the Proposed Bid Amendments will benefit market participants by establishing a transparent and predictable regulatory framework for the conduct of take-over bids wherein offeree issuer security holders have the ability to make voluntary, informed and co-ordinated tender decisions in respect of an effort by a third party to gain control of, or a controlling interest in, the offeree issuer, and the boards of directors of offeree issuers have additional time to pursue value-maximizing alternatives, develop and articulate their views on the merits of a bid, and/or negotiate with the offeror.

More specifically, from the perspective of offeree security holders, the Proposed Bid Amendments are beneficial in that they will:

- ensure that an offeree security holder will have the opportunity to participate in a majority security holder decision about the bid, as the bid cannot proceed unless a majority of the securities subject to the bid are tendered, and if such majority of securities are tendered, offeree security holders will still have the opportunity to tender into the bid during the 10 day extension period, rather than being left in a minority position;

- protect an offeree security holder's ability to tender into the bid, whether or not such offeree security holder supports the bid in the first instance; and

- enhance the quality and integrity of the collective majority security holder decision on whether or not to approve the bid by facilitating voluntary, informed and uncoerced tender decisions.

From the perspective of offeree boards, the Proposed Bid Amendments are beneficial in that they will provide offeree boards with more time to communicate their vision of the offeree issuer, attract competing offers or seek value-maximizing strategic alternatives. Further, we anticipate that, because a shorter deposit period will only be possible if an offeree board issues a news release stating an acceptable shorter deposit period, there will be greater incentive for offerors to negotiate with offeree boards, and this may increase the ability of offeree boards to negotiate better quality friendly bids.

If the Proposed Bid Amendments are adopted, we also anticipate that the use of defensive tactics will decline. As offeree boards will have significantly more time to respond to a hostile take-over bid, and all bids will require majority disinterested security holder approval, the utility of defensive tactics in responding to a bid will be decreased. This would also result in fewer regulatory hearings related to defensive tactics and increased predictability about the timeline of a bid, allowing both offerors and offeree boards to allocate resources more efficiently.

However, as the Proposed Bid Amendments require a minimum deposit period of up to 120 days (a period significantly longer than the current minimum deposit period of 35 days), offerors making a bid will likely face higher financing costs. There may also be a greater risk of loss for offerors due to uncertainty over whether or not the minimum tender requirement will be achieved. As such, offerors may need to offer consideration at greater premiums in order to win the support of a majority of independent offeree security holders.

(b) Proposed Ontario Amendments

The Commission believes that the Proposed Ontario Amendments will, when implemented, yield benefits and reduce costs to market participants. The adoption of Proposed NI 62-104 in Ontario and the repeal of Rule 62-504 would result in the take-over bid and issuer bid regime being set out in single national instrument.

7. ALTERNATIVES CONSIDERED

We considered maintaining the status quo and effecting the Proposed Bid Amendments in Ontario through amendments to the relevant provisions of Part XX of the Act and Rule 62-504. However, given that the Proposed Ontario Amendments would eliminate bifurcation of the take-over bid and issuer bid regime and streamline the regime in a single, harmonized national instrument, we determined that the Proposed Ontario Amendments were the preferred approach.

8. RELIANCE ON UNPUBLISHED STUDIES, ETC.

In developing the Proposed CSA Amendments and the Proposed Ontario Amendments, we did not rely upon any significant unpublished study, report or other written materials.

9. COMMENTS

Interested parties are invited to make written submissions on the Proposed Ontario Amendments. Please provide your comments in writing by June 29, 2015 to the address below in Microsoft Word format.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 2S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in Ontario requires publication of a summary of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published. All comments will also be posted to the Commission website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

10. QUESTIONS

Questions may be referred to:

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SCHEDULE 1

PROPOSED ADOPTION OF
NATIONAL INSTRUMENT 62-104 *TAKE-OVER BIDS AND ISSUER BIDS*

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

Table of Contents

NATIONAL 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*;

"alternative transaction" means, for an issuer:

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

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

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

(iii) a transaction between the issuer and a subsidiary of the issuer,

(b) a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer, or

(c) a sale, lease or exchange of all or substantially all the property of the issuer other than in the ordinary course of business of the issuer;

"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, or

(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*;

"**deposit period news release**" means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 120 days and not less than 35 days that is acceptable to the board of directors of the offeree issuer, expressed as a number of days from the date of the bid;

"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;

"initial deposit period" means the period, including any extension, during which securities may be deposited under a take-over bid but does not include a mandatory 10 day extension period or any extension period subsequent to a mandatory 10 day extension period;

"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;

"mandatory 10 day extension period" means the 10 day period referred to in paragraph 2.31.1(a);

"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;

"partial take-over bid" means a take-over bid for less than all of the class of securities subject to the bid;

"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 and subsection 4.8(3), 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.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder to whom paragraph 2.30(2)(a.1) applies.

(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.

(5) If an offeror is required to send a notice of change pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change.

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 reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or 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.

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder to whom paragraph 2.30(2)(a.1) applies.

(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.

(3.1) If an offeror is required to send a notice of variation pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of variation.

(4) Subsections (1), (3) and (3.1) 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, other than an extension in respect of the mandatory 10 day extension period, 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 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.

(6) A variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, must not be made after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1.

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 initial deposit period.

(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 – issuer bids

2.26 (1) If 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.

Proportionate take up and payment – partial take-over bids

2.26.1 (1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound 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) 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 – issuer bids

2.28 An offeror must allow securities to be deposited under an issuer bid for a minimum deposit period of at least 35 days from the date of the bid.

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 120 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

(a) the offeror, prior to the issuance of the deposit period news release referred to in subsection (1), has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

(b) the offeror, subsequent to the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:

(i) the date of expiry of the take-over bid referred to in subsection (1),

(ii) the date of expiry of a take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an alternative transaction, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

(a) the offeror, prior to the issuance of the news release, has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

(b) the offeror, subsequent to the issuance of the news release, commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:

(i) the date of completion or abandonment of the alternative transaction,

(ii) the date of expiry of a take-over bid referred to in paragraph (a).

Prohibition on take up – issuer bids

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

Prohibition on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following conditions are satisfied:

(a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,

(b) all terms and conditions of the bid have been complied with or waived,

(c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

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.

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder may not withdraw securities that have been deposited under the bid before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

(a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and

(b) ending at the time the offeror becomes obligated to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6) under subsection 2.32.1(7) or (8), as applicable.

(2) Despite paragraph (1)(b), a security holder may not withdraw securities that have been deposited under the take-over bid or issuer bid if

(a) the securities have been taken up by the offeror before the date of the notice of change or notice of variation,

(a.1) in the case of a partial take-over bid, the securities were deposited under the bid before the expiry of the initial deposit period and were not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or

(b) any of the following circumstances occur:

(i) a variation in the terms of a take-over bid or issuer 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 a take-over bid or issuer 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;

(iii) a variation in the terms of a take-over bid subsequent to the expiry of the initial deposit period consisting of either an increase in consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation.

(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 not be counted in determining whether the minimum tender requirement in paragraph 2.29.1(c) is satisfied and must not reduce the number of securities the offeror is bound to take up under the take-over bid.

Mandatory 10 day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a bid pursuant to subsection 2.32.1(1), the offeror must

(a) extend the period during which securities may be deposited under the bid for a period of 10 days, and

(b) promptly issue and file a news release disclosing the following

(i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,

(ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,

(iii) that the period during which securities may be deposited under the bid is extended for the mandatory 10 day extension period, and

(iv) in the case of a take-over bid that

(A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up, or

(B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event not later than one day after the expiry of the mandatory 10 day extension period.

Time limit on extension – partial take-over bids

2.31.2 A partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period.

Obligation to take up and pay for deposited securities – issuer bids

2.32 (1) If all the terms and conditions of 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 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 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 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 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 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.

Obligation to take up and pay for deposited securities – take-over bids

2.32.1 (1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period,

(a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed,

(b) all the terms and conditions of the take-over bid have been complied with or waived, and

(c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over 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) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10 day extension period, or an extension period subsequent to the mandatory extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid at any time subsequent to the expiry of the mandatory 10 day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror 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.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is only required to take up, by the time specified in that subsection, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the mandatory 10 day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10 day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

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 (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.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

Exemption – collateral benefit

6.2 (1) 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.

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision.

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 National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Incorporating information by reference

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

(c) Plain language

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

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

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

(d) Numbering and headings

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

Part 2 Contents of Take-Over Bid Circular

Item 1. Name and description of offeror

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

Item 2. Name of offeree issuer

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

Item 3. Securities subject to the bid

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

Item 4. Time period

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

Item 5. Consideration

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

Item 6. Ownership of securities of offeree issuer

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

(a) by the offeror,

(b) by each director and officer of the offeror, and

(c) if known after reasonable enquiry, by

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

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

(iii) any person acting jointly or in concert with the offeror.

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

Item 7. Trading in securities of offeree issuer

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

(a) the description of the security;

(b) the number of securities purchased or sold;

(c) the purchase or sale price of the security;

(d) the date of the transaction.

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

Item 8. Commitments to acquire securities of offeree issuer

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

Item 9. Terms and conditions of the bid

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

Item 9.1. Minimum Tender Requirement and Mandatory Extension Period

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

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

Item 10. Payment for deposited securities

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

Item 11. Right to withdraw deposited securities

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

Item 12. Source of funds

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

(a) the name of the lender,

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

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

(d) the proposed method of repayment.

Item 13. Trading in securities to be acquired

Provide a summary showing

(a) the name of each principal market on which the securities sought are traded,

(b) any change in a principal market that is planned following the take-over bid, including but not limited to listing or de-listing on an exchange,

(c) where reasonably ascertainable, in reasonable detail, the volume of trading and price range of the class of the securities in the 6-month period preceding the date of the take-over bid, or, in the case of debt securities, the prices quoted on each principal market, and

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

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

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

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

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

(a) a detailed explanation as to how the offeror determined entering into it was not prohibited by section 2.24 of the Instrument, or

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

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

Item 16. Arrangements with or relating to the offeree issuer

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

Item 17. Purpose of the bid

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

(a) subsequent transactions involving the offeree issuer such as a going private transaction, or

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

Item 18. Valuation

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

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

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

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

(a) the likelihood of the offeror completing the acquisition of securities of the offeree issuer is high, and

(b) the acquisition is a significant acquisition for the offeror.

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

Item 20. Right of appraisal and acquisition

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

Item 21. Market purchases of securities

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

Item 22. Approval of take-over bid circular

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

Item 23. Other material facts

Describe

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

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

Item 24. Solicitations

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

Item 25. Statement of rights

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

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

Item 26. Certificate

A take-over bid circular certificate form must state:

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

Item 27. Date of take-over bid circular

Specify the date of the take-over bid circular.

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 National Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Instrument) and to National Instrument 14-101 *Definitions*.

(b) Incorporating information by reference

If you are qualified to file a short form prospectus under sections 2.2 to 2.7 of National Instrument 44-101 *Short Form Prospectus Distributions*, or by reason of an exemption granted by a securities regulatory authority, you may incorporate information required under item 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 report is not included, include a statement that the most recent interim financial report 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 National 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 financial report or annual financial statements 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 National 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 financial report or annual financial statements 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 National 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,

(a.1) if one of the terms referred to in paragraph (a) is the mandatory 10 day extension period required pursuant to paragraph 2.31.1(a) of the Instrument, the number of securities deposited under the take-over bid and not withdrawn as at the date of the variation,

(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 3

(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.

SCHEDULE 2

PROPOSED REPEAL OF
ONTARIO SECURITIES COMMISSION RULE 62-504 *TAKE-OVER BIDS AND ISSUER BIDS*

1. Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids is repealed.

2. This Instrument comes into force on [●].

SCHEDULE 3

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 13-502 *FEES*

1. Ontario Securities Commission Rule 13-502 Fees is amended by this Instrument.

2. Appendix C is amended

(a) by replacing "subsection 94.2(2), (3) or (4) of the Act***" with "***subsection 2.10(2),(3) or (4) of NI 62-104***" in item 1 of the "***Document or Activity***" column of Item G, and***

(b) by replacing "section 94.5 of the Act***" with "***section 2.13 of NI 62-104***" in item 2 of the "***Document or Activity***" column of Item G.***

3. This Instrument comes into force on [●].

SCHEDULE 4

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 14-501 *DEFINITIONS*

1. Ontario Securities Commission Rule 14-501 Definitions is amended by this Instrument.

2. Subsection 1.1(2) is amended by repealing the definition of "offeree issuer***" and "***published market***".***

3. This Instrument comes into force on [●].

SCHEDULE 5

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 48-501
TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS

1. Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions is amended by this Instrument.

2. Paragraph 3.2(c) is amended by replacing "clauses 93(3)(a) through (d) of the Act***" with "***sections 4.6 and 4.7 of National Instrument 62-104 *Take-Over Bids and Issuer Bids****".***

3. This Instrument comes into force on [●].

SCHEDULE 6

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 71-801
IMPLEMENTING THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM

1. Ontario Securities Commission Rule 71-801 Implementing the Multijurisdictional Disclosure System is amended by this Instrument.

2. Section 1.1 is amended by adding the following subsection:

(3) In this Rule, "NI 62-104" means "National Instrument 62-104 *Take-Over Bids and Issuers Bids*". **.**

3. Part 3 is replaced with the following:

3.1 Application of the Act and regulations to bids — (1) The following provisions of NI 62-104 do not apply to a bid made in compliance with Part 12 of NI 71-101:

(a) sections 1.6, 2.1 to 2.3, and 2.5 to 2.7, clause 2.8(b), subsections 2.10(2), (3) and (4), subsections 2.11(1.1) and (5), subsections 2.12(1.1), (3), (3.1), (4), (5), and (6), sections 2.13 to 2.16, 2.23 to 2.34; and

(b) section 2.4 unless security holders of the offeree issuer whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) through (4) of NI 71-101, hold 20% or more of a class of securities that is the subject of the bid;

(2) The following provisions of NI 62-104 apply to a bid made in compliance with Part 12 of NI 71-101:

(a) clause 2.8(a), section 2.9, subsections 2.10(1), 2.11 (2), (3) and (4), and subsection 2.12(2);

(b) subsection 2.11(1), except the requirement to send a notice of change to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario; and

(c) subsection 2.12(1), except the requirement to send a notice of variation to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario.

3.2 Application of the Act and regulations to MJDS directors' circulars and MJDS individual director's or officer's circulars — (1) Subsections 2.17(2), and (3), sections 2.18 and 2.19, subsection 2.20(6) and sections 2.21 and 2.22 do not apply to the directors or the individual directors or officers of an offeree issuer who elect to comply with Part 12 of NI 71-101 instead of provisions of NI 62-104 otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101.

(2) The following provisions of NI 62-104 apply to the directors or the individual directors or officers of an offeree issuer who elect to comply with Part 12 of NI 71-101 instead of provisions of NI 62-104 otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101:

(a) subsections 2.17(1) and 2.20(1), except the requirement to send a directors' circular or an individual director's or officer's circular to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario;

(b) subsections 2.18(1) and 2.20(2), except the requirement to send notice of change to holders of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario;

(c) subsections 2.20(4) and (5), except the requirement to send a copy of an individual director's or officer's circular and a notice of change to holders of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of the class that is subject to the bid who are in Ontario; and

(d) subsections 2.17(4), 2.18(2), 2.20(3) and (7). .

4. This Instrument comes into force on [●].

SCHEDULE 7

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 71-802 *IMPLEMENTING NATIONAL INSTRUMENT 71-102 CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS*

1. Ontario Securities Commission Rule 71-802 Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers is amended by this Instrument.

2. Section 1.1 is amended by adding the following definition:

"NI 62-104" means National Instrument 62-104 *Take-Over Bids and Issuer Bids*; **.**

3. Section 2.3 is amended by replacing "sections 101 and 102 of the Act***" with "***section 5.2 of NI 62-104***".***

4. Section 3.3 is amended by replacing "sections 101 and 102 of the Act***" with "***section 5.2 of NI 62-104***".***

5. This Instrument comes into force on [●].

SCHEDULE 8

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 91-502 *TRADES IN RECOGNIZED OPTIONS*

1. Ontario Securities Commission Rule 91-502 Trades in Recognized Options is amended by this Instrument.

2. Section 1.1 is amended by replacing "has the meaning ascribed to that term in subsection 89(1) of the Act***" with "***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***" in the definition of "***equity security***".***

3. This Instrument comes into force on [●].

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Boston Pizza Royalties Income Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
$111,552,247.30 - 5,047,613 Subscription Receipts
Price: $22.10 per Subscription Receipt
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Laurentian Bank Securities Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Promoter(s):
Boston Pizza International Inc.
Project #2322843

Issuer Name:
Element Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 25, 2015
Offering Price and Description:
$3,750,000,000.00
Debt Securities
Preferred Shares
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2323920

Issuer Name:
FortisBC Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated March 26, 2015
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
$1,000,000,000.00 - Medium Term Note Debentures (unsecured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Casgrain & Company Limited
CIBC World Markets Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc
Promoter(s):
-
Project #2325087

Issuer Name:
Innova Gaming Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
$* - * Shares
Price: $* per Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cantor Fitzgerald Canada Corporation
Cormark Securities Inc.
Desjardins Securities Inc.
Dundee Securities Ltd.
Clarus Securities Inc.
Promoter(s):
-
Project #2324586

Issuer Name:
Mira VII Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
$250,000.00 - 2,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
RICHARDSON GMP LIMITED
Promoter(s):
-
Project #2326132

Issuer Name:
Portland Value Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
Series A, F and G Units
Underwriter(s) or Distributor(s):
Mandeville Private Client Inc.
Mandeville Wealth Services Inc.
Mandeville Private Client Inc.
Mandeville Private Client Inc. Mandeville Private Client Inc.
Promoter(s):
Portland Investment Counsel Inc.
Project #2324868

Issuer Name:
Redwood Global Equity Strategy Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
Series I Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
REDWOOD ASSET MANAGEMENT INC.
Project #2325317

Issuer Name:
Tech Achievers Growth & Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 30, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
Maximum Offering: $ * - * Units
Minimum Offering: $20,000,000 - 2,000,000 Units
Minimum Purchase: 200 Units
Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Dundee Securities Ltd.
PI Financial Corp.
Desjardins Securities Corp.
Global Securities Corporation
Industrial Alliance Securities Inc.
Promoter(s):
Harvest Portfolios Group Inc.
Project #2327156

Issuer Name:
TECSYS Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
$5,999,997.30 - 674,157 Common Shares
Price: $8.90 per Common Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Laurentian Bank Securities Inc.
Industrial Alliance Securities Inc.
Beacon Securities Limited
Promoter(s):
-
Project #2323036

Issuer Name:
TerraVest Capital Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated March 30, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
$25,000,000.00 - 7.00% Convertible Unsecured Subordinated Debentures Due June 30, 2020
PRICE: $1,000 PER DEBENTURE
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Raymond James Ltd.
Cormark Securities Inc.
TD Securities Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Promoter(s):
-
Project #2323581

Issuer Name:
TransAlta Renewables Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
$200,123,000.00 - 15,820,000 Subscription Receipts each representing the right to receive one Common Share
Price $12.65 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
Transalta Corporation
Project #2322946

Issuer Name:
Aston Hill Corporate Bond Fund
(Series A, F, I, and X units)
Aston Hill U.S. Growth Fund
(Series A, UA, F, UF, and I units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 20, 2015
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
Series A, UA, F, UF, and I units @ Net Asset Value
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
Aston Hill Asset Management Inc.
Project #2308028

Issuer Name:
Cambridge U.S. Dividend US$ Fund
(Class A, E, EF, F, I and O units)
Cambridge Bond Fund
(Class C units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
Class A, E, EF, F, I and O units @ Net Asset Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #2309290

Issuer Name:
CI G5|20 2040 Q2 Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
Class A, F and O units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #2311687

Issuer Name:
CI G5|20i 2035 Q2 Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
Class A, F and O units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #2311827

Issuer Name:
Concordia Healthcare Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 30, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
$320,001,200.00 - 3,764,720 Subscription Receipts each representing the right to receive one Common Share
Price: $85.00 per Subscription Receipt
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
GMP Securities L.P.
TD Securities Inc.
Promoter(s):
Mark Thompson
Project #2320554

Issuer Name:
Dynamic Aurion Canadian Equity Class (Series A, F, I, O and T shares)
Dynamic Real Return Bond Fund (Series A, F, I and O units)
DMP Canadian Dividend Class (Series A and F shares)
DMP Canadian Value Class (Series A and F shares)
DMP Power Canadian Growth Class (Series A and F shares)
DMP Global Value Class (Series A and F shares)
DynamicEdge 2020 Class Portfolio (Series A, F and T shares)
DynamicEdge 2020 Portfolio (Series A, F, I, O and T units)
DynamicEdge 2025 Class Portfolio (Series A, F and T shares)
DynamicEdge 2025 Portfolio (Series A, F, I, O and T units)
DynamicEdge 2030 Class Portfolio (Series A, F and T shares)
DynamicEdge 2030 Portfolio (Series A, F, I , O and T units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated March 20, 2015 to the Simplified Prospectuses and Annual Information Form dated November 18, 2014
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
1832 Asset Management L. P.
Promoter(s):
1832 Asset Management L.P.
Project #2267257

Issuer Name:
Dynamic U.S. Equity Private Pool Class
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated March 13, 2015 to the Simplified Prospectus and Annual Information Form dated May 12, 2014
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
Series F and FH Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 ASSET MANAGEMENT L.P.
Project #2190163

Issuer Name:
Foundation Equity Portfolio
Foundation Tactical Balanced Portfolio
Foundation Tactical Conservative Portfolio
Foundation Tactical Growth Portfolio
Foundation Yield Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 26, 2015
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
Series A, F and O units
Underwriter(s) or Distributor(s):
Portfolio Strategies Securities Inc.
Promoter(s):
Portfolio Strategies Securities Inc.
Project #2312876

Issuer Name:
Friedberg Asset Allocation Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
FRIEDBERG MERCANTILE GROUP LTD.
Friedberg Mercantile Group Ltd.
Promoter(s):
FRIEDBERG MERCANTILE GROUP LTD.
Project #2307389

Issuer Name:
Friedberg Global-Macro Hedge Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
FRIEDBERG MERCANTILE GROUP LTD.
Friedberg Mercantile Group Ltd.
Promoter(s):
FRIEDBERG MERCANTILE GROUP LTD.
Project #2307392

Issuer Name:
Horizons Cdn Select Universe Bond ETF
Horizons S&P 500® Index ETF
Horizons S&P/TSX 60 Index ETF
Horizons S&P/TSX Capped Energy Index ETF
Horizons S&P/TSX Capped Financials Index ETF
Principal Regulator - Ontario
Type and Date:
Amended and Restated Long Form Prospectus dated March 25, 2015 (the amended prospectus) amending and restating the Long Form Prospectuses dated August 26, 2014
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
Class A units
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2236853, 2308281

Issuer Name:
Horizons US 7-10 Year Treasury Bond ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 25, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
Class A units
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2308281, 2236253

Issuer Name:
HSBC Mortgage Fund
Principal Regulator - British Columbia
Type and Date:
Amendment No. 2
dated March 16, 2015 (amendment no. 2) to the Simplified Prospectus and Annual Information Form dated June 25, 2014.
NP 11-202 Receipt dated March 26, 2015
Offering Price and Description:
Investor Series, Advisor Series, Premium Series, Manager Series and Institutional Series Units @ Net Asset Value
Underwriter(s) or Distributor(s):
HSBC Investment Funds (Canada) Inc.
Promoter(s):
HSBC Global Asset Management (Canada) Limited
Project #2209573

Issuer Name:
Imperus Technologies Corp. Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
C$24,725,575.00 - 70,644,500 Common Shares and 35,322,250 Warrants issuable upon the automatic exercise of 70,644,500
issued and outstanding Subscription Receipts
Price: C$0.35 Per Subscription Receipt
Underwriter(s) or Distributor(s):
Dundee Securities Ltd.
Euro Pacific Canada Inc.
Promoter(s):
Tito Gandhi
Project #2313153

Issuer Name:
Life & Banc Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
Maximum Offering: $50,176,000 - Up to 2,560,000 Preferred Shares and 2,560,000 Class A Shares
Prices: $10.05 per Preferred Share and $9.55 per Class A Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
GMP Securities L.P.
Raymond James Ltd.
Canaccord Geniuty Corp.
Desjardins Securities Inc.
Dundee Securities Ltd.
Haywood Securities Inc.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
-
Project #2322050

Issuer Name:
NioCorp Developments Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated March 23, 2015
NP 11-202 Receipt dated March 25, 2015
Offering Price and Description:
$2,185,500 .00 - 2,914,000 Common Shares and 2,914,000 Warrants Issuable on Exercise of 2,914,000 Special Warrants Price: $0.75 per Special Warrant
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
-
Project #2319653

Issuer Name:
Series A, Series P, Series F, Series PF, Series I and Series O securities of:
Sentry Canadian Income Class *
Sentry Canadian Income Fund
Sentry Diversified Equity Class *
Sentry Diversified Equity Fund
Sentry Diversified Income Fund
Sentry Global Growth and Income Class *
Sentry Global Growth and Income Fund
Sentry Growth and Income Fund
Sentry Small/Mid Cap Income Class *
Sentry Small/Mid Cap Income Fund
Sentry U.S. Growth and Income Class *
Sentry U.S. Growth and Income Fund
Sentry Canadian Resource Class *
Sentry Energy Growth and Income Fund
Sentry Infrastructure Fund
Sentry Precious Metals Growth Class *
Sentry Precious Metals Growth Fund
Sentry REIT Class *
Sentry REIT Fund
Sentry Conservative Balanced Income Class *
Sentry Conservative Balanced Income Fund
Sentry Global Balanced Income Fund
Sentry U.S. Balanced Income Fund
Sentry Canadian Bond Fund
Sentry Enhanced Corporate Bond Class *
Sentry Enhanced Corporate Bond Fund
Sentry Money Market Class *
Sentry Money Market Fund
Sentry Tactical Bond Class *
Sentry Tactical Bond Fund
* a class of shares of Sentry Corporate Class Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated March 12, 2015 to the Simplified Prospectuses and Annual Information Form dated June 6, 2014
NP 11-202 Receipt dated March 25, 2015
Offering Price and Description:
Series A, Series P, Series F, Series PF, Series I and Series O securities
Underwriter(s) or Distributor(s):
Sentry Investments Inc.
Promoter(s):
Sentry Investments Inc.
Project #2191886

Issuer Name:
Sentry Growth Portfolio
(Series A, Series P, Series F, Series PF, Series I, Series T4, Series T6, Series FT4, Series FT6
and Series O securities)
Sentry Growth and Income Portfolio
(Series A, Series P, Series F, Series PF, Series I, Series T4, Series T6, Series FT4, Series FT6
and Series O securities)
Sentry Income Portfolio
(Series A, Series P, Series F, Series PF, Series I, Series T5, Series T7, Series FT5, Series FT7
and Series O securities)
Sentry Conservative Income Portfolio
(Series A, Series P, Series F, Series PF, Series I, Series T5, Series T7, Series FT5, Series FT7
and Series O securities)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated March 12, 2015 to the Simplified Prospectuses and Annual Information Form dated September 15, 2014
NP 11-202 Receipt dated March 25, 2015
Offering Price and Description:
Series A, Series P, Series F, Series PF, Series I, Series T4, Series T5, Series T7, Series T6, Series FT4, Series FT5, Series FT7, Series FT6 and Series O securities
Underwriter(s) or Distributor(s):
Sentry Investments Inc.
Promoter(s):
SENTRY INVESTMENTS INC.
Project #2240298

Issuer Name:
Starlight U.S. Multi-Family (No. 4) Core Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 27, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
Maximum: US$75,000,000 of
Class A Units and/or Class U Units and/or Class D Units and/or
Class E Units and/or Class F Units and/or Class H Units and/or Class C Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Raymond James Ltd.
TD Securities Inc.
Dundee Securities Ltd.
GMP Securities L.P.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Promoter(s):
Starlight Investments Ltd.
Project #2310337

Issuer Name:
Series A, Series AT5, Series T5, Series T8, Series D, Series E,
Series F, Series I and Series O securities, as indicated, of
Sun Life BlackRock Canadian Equity Fund (Series A, T5, T8, E, F, I and O securities)
Sun Life BlackRock Canadian Balanced Fund (Series A, T5, E, F, I and O securities)
Sun Life MFS Canadian Bond Fund (Series A, D, E, F, I and O securities)
Sun Life MFS Balanced Growth Fund (Series A, D, E, F, I and O securities)
Sun Life MFS Balanced Value Fund (Series A, D, E, F, I and O securities)
Sun Life MFS Canadian Equity Growth Fund (Series A, D, E, F, I and O securities)
Sun Life MFS Canadian Equity Fund (Series A, D, E, F, I and O securities)
Sun Life MFS Canadian Equity Value Fund (Series A, D, E, F, I and O securities)
Sun Life MFS Dividend Income Fund (Series A, D, E, F, I and O securities)
Sun Life MFS U.S. Equity Fund (Series A, D, E, F, I and O securities)
Sun Life Franklin Bissett Canadian Equity Class* (Series A, AT5, E, F, I and O securities)
Sun Life Trimark Canadian Class* (Series A, AT5, E, F, I and O securities)
Sun Life Sionna Canadian Small Cap Equity Class* (formerly Sun Life Canadian Small Cap
Equity
Class) (Series A, AT5, E, F, I and O securities)
(*each a class of shares of Sun Life Global Investments Corporate Class Inc.)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 25, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
Series A, Series AT5, Series T5, Series T8, Series D, Series E, Series F, Series I and Series O securities @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
SUN LIFE GLOBAL INVESTMENTS (CANADA) INC.
Project #2303506

Issuer Name:
TD Private Canadian Bond Income Fund
TD Private Canadian Bond Return Fund
TD Private Canadian Corporate Bond Fund
TD Private U.S. Corporate Bond Fund
TD Private Canadian Diversified Yield Fund
TD Private Canadian Blue Chip Dividend Fund
TD Private Canadian Blue Chip Equity Fund
TD Private Canadian Value Fund
TD Private Canadian Equity Plus Fund
TD Private Canadian Strategic Opportunities Fund
TD Private U.S. Blue Chip Equity Fund
TD Private U.S. Blue Chip Equity Currency Neutral Fund
TD Private U.S. Mid-Cap Equity Fund
TD Private International Equity Fund
TD Private International Stock Fund
TD Private Target Return Fund
TD Private Target Return Plus Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 26, 2015
NP 11-202 Receipt dated March 27, 2015
Offering Price and Description:
units
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #2307626

Issuer Name:
Whitecap Resources Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated March 30, 2015
NP 11-202 Receipt dated March 30, 2015
Offering Price and Description:
$110,011,500.00 - 8,149,000 Subscription Receipts each representing the right to receive one Common Share
Price $13.50 per Subscription Receipt
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
TD Securities Inc.
CIBC World Markets Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
Scotia Capital Inc.
FirstEnergy Capital Corp.
Macquarie Capital Markets Canada Ltd.
BMO Nesbitt Burns Inc.
Dundee Securities Ltd.
Promoter(s):
-
Project #2321052

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Lazard Canada Corporation	Exempt Market Dealer	March 23, 2015
Voluntary Surrender	TD Sponsored Companies Inc.	Investment Fund Manager	March 23, 2015

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.3 Clearing Agencies

13.3.1 Variation of the Recognition Order of the Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.

VARIATION OF THE RECOGNITION ORDER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
(CDS LTD.)

AND

CDS CLEARING AND DEPOSITORY SERVICES INC.
(CDS CLEARING)

VARIATION ORDER

The Ontario Securities Commission (Commission) issued an order pursuant to section 144 of the *Securities Act* (Ontario) on March 27, 2015 (Order) varying the current recognition order of CDS Ltd. and CDS Clearing to provide that the annual rebate calculation includes the incremental cost (Base Period) of providing sufficient liquidity facilities to enable the continued operation of the New York Link/DTC Direct Link cross-border service.

The Order is published in Chapter 2 of this Bulletin.

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Chapter 25

Other Information

25.1 Exemptions

25.1.1 Artemis Investment Management Limited and Artemis Floating & Variable Rate Preferred Fund – s. 19.1 of NI 41-101 General Prospectus Requirements

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from ss. 2.3(1) of NI 41-101 to file the first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus – National Instrument 41-101 General Prospectus Requirements.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, s. 2.3(1).

March 20, 2015

Artemis Investment Management Limited and
Artemis Floating & Variable Rate Preferred Fund

Attention: Vanessa Hansford

Dear Ms.:

Re: Artemis Investment Management Limited (the Filer)

Preliminary Long Form Prospectus dated December 19, 2014

Artemis Floating & Variable Rate Preferred Fund (the Fund)

Exemptive Relief Application under Part 19 of National Instrument 41-101 General Prospectus Requirements (NI 41-101)

Application No. 2015/0120; SEDAR Project Number 2295171

By letter dated February 25, 2015 (the Application), the Filer, as manager of the Fund, applied on behalf of the Fund to the Director of the Ontario Securities Commission (the Director) under section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1) of NI 41-101, which prohibits an issuer from filing its first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus which relates to the final prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the first amendment to the preliminary prospectus for the Fund, subject to the condition that the first amendment to the preliminary prospectus be filed by no later than April 30, 2015.

Yours very truly,

"Darren McKall"
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

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