The Ontario Securities Commission

OSC Bulletin

August 25, 2006

Volume 29, Issue 34

(2006), 29 OSCB

The Ontario Securities Commission Administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Published under the authority of the Commission by:
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One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

ISSN 0226-9325

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

AUGUST 25, 2006

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
Toronto, Ontario
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Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

August 25, 2006 9:30 a.m.	**Patrick Gouveia, Andrew Peters, Ronald Perryman and Paul Vickery** s. 127 and 127.1 M. Britton in attendance for Staff Panel: WSW/PKB * Settlement Hearing
September 12, 2006 10:00 a.m.	**Maitland Capital Ltd *et al*** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: PMM/ST
September 12, 2006 10:00 a.m.	**First Global Ventures, S.A. and Allen Grossman** s. 127 D. Ferris in attendance for Staff Panel: PMM/ST
September 13, 2006 10:00 a.m.	**Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: PMM/ST
September 21, 2006 10:00 a.m.	**Eugene N. Melnyk, Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney** s. 127 and 127.1 J. Superina in attendance for Staff Panel: TBA

September 21, 2006 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fun and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s.127 and 127.1 D. Ferris in attendance for Staff Panel: SWJ/ST
October 12, 2006 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
October 19, 2006 10:00 a.m.	**Euston Capital Corporation and George Schwartz** s. 127 Y. Chisholm in attendance for Staff Panel: WSW/ST
October 20, 2006 10:00 a.m.	**Olympus United Group Inc.** s.127 M. MacKewn in attendance for Staff Panel: TBA
October 20, 2006 10:00 a.m.	**Norshield Asset Management (Canada) Ltd.** s.127 M. MacKewn in attendance for Staff Panel: TBA
December 5, 6, & 7, 2006 10:00 a.m.	**Jose Castaneda** s. 127 and 127.1 T. Hodgson in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Cornwall *et al*** s. 127 K. Manarin in attendance for Staff Panel: TBA
TBA	**Robert Patrick Zuk, Ivan Djordjevic, Matthew Noah Coleman, Dane Alan Walton, Derek Reid and Daniel David Danzig** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 & 127.1 K. Manarin in attendance for Staff Panel: TBA
TBA	**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson** s.127 J. Superina in attendance for Staff Panel: TBA
TBA	**Philip Services Corp., Allen Fracassi**, Philip Fracassi**, Marvin Boughton**, Graham Hoey**, Colin Soule*, Robert Waxman and John Woodcroft**** s. 127 K. Manarin in attendance for Staff Panel: TBA

* Settled November 25, 2005
** Settled March 3, 2006

TBA	**Mega-C Power Corporation, Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited**
	S. 127
	T. Hodgson in attendance for Staff
	Panel: TBA
TBA	**Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg**
	s. 127
	M. MacKewn & T. Hodgson for Staff
	Panel: TBA
TBA	**Bennett Environmental Inc.*, John Bennett, Richard Stern, Robert Griffiths and Allan Bulckaert***
	J. Cotte in attendance for Staff
	Panel: TBA
	* settled June 20, 2006
TBA	**John Daubney and Cheryl Littler**
	s. 127 & 127.1
	G. Mackenzie in attendance for Staff
	Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

Andrew Stuart Netherwood Rankin

1.1.2 IDA Proposed New Methodology for Margining Equity Securities and Related Amendments to Regulation 100 and Form 1

THE INVESTMENT DEALERS ASSOCIATION (IDA)

PROPOSED NEW METHODOLOGY FOR MARGINING EQUITY SECURITIES AND RELATED AMENDMENTS TO REGULATION 100 AND FORM 1

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission (OSC) approved a new methodology for margining equity securities and related amendments to Regulation 100 and Form 1 proposed by the IDA (Proposal). In addition, the Autorité des marchés financiers (AMF) approved, and the Alberta Securities Commission (ASC) and the British Columbia Securities Commission (BCSC) did not object to the Proposal. Current IDA rules require its members and their clients to maintain margin on securities to cover the risk of loss associated with holding the securities. The amount of margin to be maintained for a security is based on the market price per share of the security. Since market price is not a good indicator of the market risk of a security, the IDA proposed a new methodology, the Basic Margin Rate Methodology, to determine the margin rates for securities based on their price risk and liquidity risk. Under the proposed methodology, the price risk of a security would be determined by its historical price volatility, and liquidity risk would be determined by its average daily traded volume and total public float. The IDA will use this Basic Margin Rate Methodology to determine margin rates for equity securities listed in Canadian and U.S. markets that impose certain minimum initial and ongoing financial listing requirements.

The Proposal was published for comment on January 13, 2006 at (2006) 29 OSCB 420. Immaterial changes have been made to the proposed policy to reflect that The Nasdaq Stock Market is now a recognized exchange in the U.S. and to correct minor typographical errors. The revised Proposal, black-lined to indicate the changes from the previously published version, is included in Chapter 13 of this Bulletin.

1.1.3 Notice of Commission Order – Application to Amend Recognition Order of TSX Group Inc. and TSX Inc.

APPLICATION TO AMEND RECOGNITION ORDER OF TSX GROUP INC. AND TSX INC.

NOTICE OF COMMISSION ORDER

On August 10, 2006, the Commission issued an order (Variation Order) pursuant to section 144 of the *Securities Act* (Ontario) to vary an order dated August 12, 2005, as amended December 16, 2005, recognizing TSX Group and TSX Inc. as a stock exchange. A copy of the Variation Order is published in Chapter 2 of this Bulletin.

The Variation Order revises the financial viability terms and conditions in paragraph 12 to reflect recent revisions to the accounting policies of TSX Group Inc. and TSX Inc. relating to the classification of deferred revenue-initial and additional listings fees, and the related future tax assets.

The Variation Order also revises the regulation terms and conditions in paragraph 13 to provide TSX Inc. with the ability to seek the approval of the Commission to perform, through another party, regulation functions not performed by RS Inc.

1.2 Notices of Hearing

1.2.1 Microsourceonline 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
MICROSOURCEONLINE INC.,
MICHAEL PETER ANZELMO,
VITO CURALLI, JAIME S. LOBO, SUMIT MAJUMDAR
AND JEFFREY DAVID MANDELL

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act* (the "Act") at the Commission's offices on the 17th floor, 20 Queen Street West, Toronto, Ontario, on a date and at a time to be scheduled, to consider:

(i) whether, in the opinion of the Commission, it is in the public interest to make an order against the respondents, pursuant to sections 127(1) and 127.1 of the Act that:

  (a) trading in any securities by the respondents cease for such period as is specified by the Commission;

  (b) any exemptions contained in Ontario securities law do not apply to the respondents for such period as is specified by the Commission;

  (c) the respondents disgorge to the Commission any amounts obtained as a result of their non-compliance with the Act;

  (d) the respondents be reprimanded;

  (e) the respondents be ordered to pay the costs of the Commission's investigation;

  (f) such other orders as the Commission may deem appropriate; and

(ii) whether, in the opinion of the Commission, it is in the public interest to make an order against the individual respondents, pursuant to sections 127(1) of the Act that:

  (a) those respondents resign from any positions that they hold as directors or officers of an issuer;

(b) those respondents be prohibited from becoming or acting as a director or officer of any issuer for such period as is specified by the Commission;

(iii) whether, in the opinion of the Commission, an order should be made pursuant to section 37 of the Act that the respondents cease to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or in any class of securities, for such period as is specified by the Commission;

BY REASON of the allegations set out in the attached Statement of Allegations made by Staff of the Commission dated July 26, 2006;

AND TAKE FUTHER NOTICE THAT any party to the proceedings 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 aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 26th day of July, 2006

"John Stevenson"
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
MICROSOURCEONLINE INC.,
MICHAEL PETER ANZELMO,
VITO CURALLI, JAIME S. LOBO, SUMIT MAJUMDAR
AND JEFFREY DAVID MANDELL

STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION

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

I. BACKGROUND

1. The respondent Microsourceonline Inc. ("Microsource") is a corporation incorporated in Delaware which, between July 2002 and August 2004, carried on business from premises in Toronto and Mississauga, Ontario. Microsource closed its Ontario offices in August 2004 and has continued its operations in North Carolina. At the relevant time between July 2002 and August 2004, Microsource purported to be developing a website to provide computer product and pricing information. Microsource is not, and has never been, a reporting issuer in Ontario. Microsource is not, and has never been, registered in any capacity with the Ontario Securities Commission.

2. The respondents Michael Peter Anzelmo, Vito Curalli and Jeffrey David Mandell (collectively, the "Salespeople" and individually, the "Salesperson") are salespeople hired by Microsource to sell Microsource common shares to investors in Ontario.

3. Michael Peter Anzelmo ("Anzelmo") was registered with the Commission as follows:

(a) between November 9, 1992 and January 8, 1993, as a salesperson in the category of securities dealer with Glendale Securities Inc.;

(b) between February 1, 1993 and September 16, 1994, as a salesperson in the category of investment dealer with A.C. Macpherson & Co. Inc.;

(c) between December 6, 1995 and February 26, 1996, as a salesperson in the category of securities dealer with J.M. Charter Securities Corp.; and

(d) between April 29, 1996 and July 6, 2000, as a salesperson in the category of

securities dealer with Gordon-Daly Grenadier Securities.

However, after July 6, 2000, Anzelmo was not registered with the Commission.

4. In the period between July 23, 1990 and July 6, 2000, Vito Curalli ("Curalli") was registered with the Commission as a salesperson in the category of a securities dealer with Gordon-Daly Grenadier Securities. However, after July 6, 2000, Curalli was not registered with the Commission.

5. In the period between October 29, 1985 and July 10, 2000, Jeffrey David Mandell ("Mandell") was registered with the Commission as a salesperson in the category of securities dealer with Gordon-Daly Grenadier Securities. However, after July 10, 2000, Mandell was not registered with the Commission.

6. Jaime Lobo ("Lobo") is a resident of Ontario who was, at all relevant times, a director, president and chief financial officer of Microsource. He has never been registered with the Commission.

7. Sumit Majumdar ("Majumdar") is a resident of Ontario who was, in the period between June 2000 and December 2002, an officer and director of Microsource. After he resigned from his positions as officer and director of Microsource, Majumdar remained fully involved in Microsource's management, regulatory and corporate affairs. He has never been registered with the Commission.

8. Lobo and Majumdar were the directing minds of Microsource.

9. The Salespeople were hired in 2002 by Microsource to sell Microsource common shares to investors in Ontario, purportedly pursuant to the accredited investor exemption set out in Ontario Securities Commission Rule 45-501 (as it then was).

10. The scope of the Salespeople's duties was set out in separate contracts dated July 26, 2002 between Microsource (under the signature of Majumdar) and each Salesperson as follows:

1. Employment

1) *[Salesperson] represents, and warrants to [Microsource] that [Salesperson] has the required skills and experience to perform the duties and exercise the responsibilities required of [Salesperson] as an Investor Relations Consultant.* In carrying out these duties and responsibilities, [Salesperson] undertakes to comply with all lawful reasonable instructions which he or she may receive from any supervisors or superiors representing [Salesperson]. [Salesperson] specifically undertakes and shall be responsible for the following:

(a) Solicitation and forwarding of Investor expressions of interest to [Microsource]. [Salesperson] understands and agrees that he shall not have authority to accept any orders; nor shall he have any authority to enter into an agreement or incur any liability on behalf of [Microsource];

[there were no further lettered subparagraphs to clause 1)]

. . . .

6) *[Salesperson] acknowledges that share sales made to investors in Ontario will be accepted by [Microsource] provided that the Share Subscription Form is executed by the proposed shareholder and delivered to [Microsource] together with funds equal to the amount of shares subscribed for by the purchaser multiplied by the subscription price per share.*

7) [Salesperson] acknowledges that his employment duties shall include:

a) the dissemination of the Offering Documents to persons resident in the Province of Ontario;

b) to obtain expressions of interest from investors as that term is defined in Rule 45-501 and expressed in the Subscription form;

c) to forward expression of interest in the capital stock of [Microsource] business to [Microsource]. Emphasis added.

b) SALES OF COMMON SHARES OF MICROSOURCE

11. Between July 2002 and August 2004, Microsource and the Salespeople participated in a sales process for Microsource's common shares. Potential investors were identified by cold calling individuals listed in a directory of business owners. A "qualifier" made the initial telephone calls and provided potential investors with information about Microsource. If a potential investor was interested, an offering memorandum was sent.

12. One of the Salespeople would then call the potential investor back to discuss the material sent, provide more information about Microsource and gather purchase information to be included on a subscription form. The Salespeople used a persistent and aggressive sales approach in their telephone calls with investors and presented Mircosource as a favourably-priced investment opportunity in a manner that downplayed the risks of the investment.

13. The Salespeople sent subscription forms to the investor for signature. Prior to subscription forms being sent to individuals for their signature, section (m) of the accredited investor definition section was pre-marked with an "x", thereby indicating that the individual was an accredited investor. Section (m) in the subscription form corresponded to subsection (m) of the definition of "accredited investor" in section 1.1 of Ontario Securities Commission Rule 45-501 (as it then was). The Salespeople did not typically mention the term "accredited investor" during phone calls with potential investors, nor did the Salespeople ask potential investors specific questions about their net worth.

14. The investor returned a signed subscription form and cheque to the Salespeople. Once a prospective purchaser sent the Salespeople a signed subscription form and a cheque, Lobo and/or Majumdar would review and approve the subscription form and deal with the funds received.

15. After the investor had made an initial investment, the Salespeople usually contacted the investor again to solicit further purchases of Microsource common shares. As a result, many investors purchased Microsource shares on more than one occasion. In discussions concerning follow-on investments, there was no discussion of the investors' net worth.

16. Microsource established sales policies, but also relied on the Salespeople's prior experience for sales practices. Lobo and Majumdar were responsible for supervising the Salespeople. The Salespeople also provided training to others involved in the sale of shares by Microsource. Microsource communicated to the Salespeople that they were to solicit sales only to investors who qualified as accredited investors.

17. Microsource closed the offering on August 5, 2004. With the closure of the offering, there was no further role for the Salespeople and their work for Microsource ended.

d) CAPITAL RAISED

18. The Salespeople sold Microsource's common shares to accredited investors and also to investors who were not accredited investors. The total capital raised in the Microsource offering was $2,207,400.00 from approximately 115 Ontario investors.

V. CONDUCT CONTRARY TO THE PUBLIC INTEREST

19. By carrying out acts directly or indirectly in furtherance of trades of Microsource common shares, Microsource and the Salespeople have engaged in conduct that constitutes "trading" in securities. Accordingly, they are required to be registered pursuant to section 25 of the Securities Act, R.S.O. 1990, C. S.5, as amended (the "Act").

20. By engaging, and holding themselves out as engaging, in the business of trading in securities in Ontario, Microsource and the Salespeople have acted as market intermediaries, as defined in s. 204 of the Regulation to the Act, R.R.O. 1990, Regulation 1015. As such, the accredited investor exemption from the registration requirements in Ontario securities law was not available for the sale of those securities, by virtue of section 3.4 of Ontario Securities Commission Rule 45-501 (as it then was). Registration in the limited market dealer category was required.

21. By failing to register in the proper category under the Act, or at all, Microsource and the Salespeople have breached s. 25 of the Act.

22. The sales approach adopted by Microsource and the Salespeople was also contrary to the public interest.

23. The Salespeople benefited financially from their misconduct, receiving total compensation in respect of selling Microsource shares, in the following amounts:

    (a) Anzelmo $287,550.00;

    (b) Curalli, $288,600.00; and

    (c) Mandell, $380,250.00.

    This compensation constituted a substantial percentage of the funds raised in the offering.

24. Microsource benefited financially from its misconduct by raising capital in the offering of $2,207,400.00 from approximately 115 Ontario investors.

25. By their actions set out above, the respondents Lobo and Majumdar authorized, permitted or acquiesced in Microsource's and the Salespeople's breach of s. 25(1) of the Act.

26. The conduct of the Respondents contravened Ontario securities law and is contrary to the public interest.

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

Dated at Toronto this 26th day of July, 2006

1.2.2 Patrick Gouveia 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
PATRICK GOUVEIA, ANDREW PETERS,
RONALD PERRYMAN AND PAUL VICKERY

NOTICE OF HEARING
(s. 127 and s. 127(1))

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to section 127 of the Securities Act, R.S.O. 1990, c.S.5, as amended (the "Act"), at the offices of the Commission, 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario commencing on August 25, 2006 at 9:30 a.m. or soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether pursuant to section 127 and s. 127.1 of the Act, it is in the public interest for the Commission:

(a) to approve a Settlement Agreement entered into between Staff of the Commission and the respondent, Paul Vickery ("Vickery");

(b) to make an order pursuant to subsection 127(1), clause 6 that Vickery be reprimanded;

(c) to make an order pursuant to s. 127(1), clause 7 that Vickery resign any positions that he may hold as a director or officer of an issuer;

(d) to make an order pursuant to s. 127(1), clause 8 that Vickery be prohibited from becoming or acting as a director or officer of any issuer; and

(e) to make an order pursuant to s. 127.1 that Vickery make a contribution toward the costs of Staff's investigation and costs related to this proceeding.

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

AND FURTHER TAKE NOTICE that in the event that any party fails to attend, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 17th day of August, 2006.

"John Stevenson"
Secretary to the Commission

1.4 Notices from the Office of the Secretary

1.4.1 Microsourceonline Inc. et al.

FOR IMMEDIATE RELEASE
August 17, 2006

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

AND

IN THE MATTER OF
MICROSOURCEONLINE INC.,
MICHAEL PETER ANZELMO,
VITO CURALLI, JAIME S. LOBO, SUMIT MAJUMDAR
AND JEFFREY DAVID MANDELL

TORONTO – The Office of the Secretary issued a Notice of Hearing scheduling a hearing on a date and at a time to be scheduled in the above noted matter.

A copy of the Notice of Hearing and the Statement of Allegations are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Director, Communications
and Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 Patrick Gouveia et al.

FOR IMMEDIATE RELEASE
August 18, 2006

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

AND

IN THE MATTER OF
PATRICK GOUVEIA, ANDREW PETERS,
RONALD PERRYMAN AND PAUL VICKERY

TORONTO – The Commission issued a Notice of Hearing scheduling a hearing on Friday, August 25, 2006 at 9:30 a.m. in the above noted matter to consider a Settlement Agreement entered into by Staff of the Commission and Paul Vickery.

A copy of the Notice of Hearing issued August 17, 2006 and Statement of Allegations dated June 2, 2004 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.3 Falconbridge Limited

FOR IMMEDIATE RELEASE
August 22, 2006

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

AND

IN THE MATTER OF
FALCONBRIDGE LIMITED

TORONTO – On August 17, 2006, the Commission issued Reasons for its Order dated June 30, 2006 respecting the application by Xstrata plc and Xstrata Canada Inc. and the application by Falconbridge Limited heard June 27, 2006.

Copies of the Order and Reasons are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
and Public Affairs
416-593-8120

Laurie Gillett
Manager, Media Relations
416-595-8913

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Keystone North America Inc. and Keystone Newport ULC - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer of subordinated notes (Keystone ULC) forming part of income participating securities (IPSs) previously granted relief from the continuous disclosure and certification filing requirements – application to vary the previous decision to remove a condition that the obligations of Keystone ULC continue to be guaranteed by every other subsidiary of the issuer of the equity component of the IPSs (Keystone North America Inc.) – relief granted subject to certain conditions, including (a) Keystone ULC's obligations under the subordinated notes continue to be guaranteed by one or more wholly-owned subsidiaries of Keystone North America Inc., and (b) Keystone North America Inc. includes prescribed financial information in the notes to its financial statements in order to enable investors to effectively "de-consolidate" the financial results of Keystone North America Inc. and Keystone ULC and determine the contribution of both the guarantor and non-guarantor subsidiaries of Keystone North America Inc. to the financial performance of Keystone North America Inc. and Keystone ULC.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.

Applicable National Instruments

National Instrument 51-102 Continuous Disclosure Obligations.

August 14, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA,
NEW BRUNSWICK, NEWFOUNDLAND,
NORTHWEST TERRITORIES,
NUNAVUT AND YUKON TERRITORY
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
KEYSTONE NORTH AMERICA INC. AND
KEYSTONE NEWPORT ULC

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker), in each of the Jurisdictions has received an application from Keystone North America Inc. (KNA) and Keystone Newport ULC (Keystone ULC, and together with KNA, the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the decision document dated May 13, 2005 issued by the Decision Makers, in respect of the Filer (the Original Decision Document) be varied by removing the condition contained in the Original Decision Document that Keystone ULC's obligations under its subordinated notes (the Subordinated Notes) continue to be guaranteed by every other subsidiary of KNA (the Guarantee Requirement).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):

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

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. Pursuant to the Original Decision Document, Keystone ULC is exempt from:

   (a) except in the Northwest Territories, the requirements under the Legislation to:

      (i) issue press releases and file reports regarding material changes;

      (ii) file annual financial statements together with an auditor's report and annual MD&A, as well as interim financial statements

together with a notice regarding auditor review or a written review report, if required, and interim MD&A;

(iii) send annually a request form to the registered holders and beneficial owners of Keystone ULC's securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of Keystone ULC's annual financial statements and annual MD&A, interim financial statements and interim MD&A, or both, and to send a copy of financial statements and MD&A to registered holders and beneficial owners;

(iv) send a form of proxy and information circular with a notice of meeting to registered holders of voting securities and to file the information circular, form of proxy and all other material required to be sent in connection with the meeting to which the information circular or form of proxy relates;

(v) where applicable, file a business acquisition report, including any required financial statement disclosure, if Keystone ULC completes a significant acquisition;

(vi) file a copy of any disclosure material that it sends to its securityholders;

(vii) file an annual information form; and

(viii) where applicable, file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to Keystone ULC and was entered into within the last financial year, or before the last financial year but is still in effect,

(collectively, the Continuous Disclosure Requirements); and

(b) the requirements under the Legislation except in British Columbia to:

(i) file annual certificates in accordance with section 2.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Filer's Annual and Interim Filings* (MI 52-109); and

(ii) file interim certificates in accordance with section 3.1 of MI 52-109,

(collectively, the Certification Filing Requirements).

2. Pursuant to the Original Decision Document, the Continuous Disclosure Requirements and the Certification Filing Requirements do not apply to Keystone ULC, provided that, among other things, Keystone ULC complies with the Guarantee Requirement.

3. On March 14, 2006, Keystone America, Inc. formed a wholly-owned subsidiary, 2096837 Ontario Limited.

4. On April 3, 2006, 2096837 Ontario Limited closed its acquisition of Lahaie & Sullivan Cornwall Funeral Homes Limited and all of the assets of Lahaie & Sullivan Monuments Partnership.

5. On April 21, 2006, 2096837 Ontario Limited changed its name to Keystone Canada Funeral Homes Inc. (Keystone Canada).

6. Due to potential negative US tax consequences to KNA, Keystone Canada has not guaranteed Keystone ULC's obligations under the Subordinated Notes for an indefinite period.

7. The consolidated financial statements of KNA will include the financial results of Keystone Canada for so long as Keystone Canada remains a subsidiary of KNA.

8. KNA will provide investors who hold Subordinated Notes (including Subordinated Notes that are represented by Income Participating Securities of the Filer) with the information required to be included pursuant to item 13.3(ii) of Form 44-101F1 of National Instrument 44-101 *Short Form Prospectus Distributions* in order to enable investors to effectively "de-consolidate" the financial results of the Filer and determine the contribution of both the guarantor and the non-guarantor subsidiaries of the Filer to the Filer's financial performance.

Decision

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.

The Decision of the Decision Makers pursuant to the Legislation is that the Original Decision Document be varied by removing the Guarantee Requirement, provided that:

1. KNA includes the following consolidating summary financial information in the notes to its interim and annual financial statements, presented with a separate column for each of (a) Keystone ULC, (b) each credit supporter on a combined basis, (c) the non-guarantor subsidiaries on a combined basis, (d) consolidating adjustments and (e) the total consolidated amounts:
    1. Sales or revenues;
    2. Income from continuing operations before extraordinary items;
    3. Net earnings;
    4. Current assets;
    5. Non-current assets;
    6. Current liabilities; and
    7. Non-current liabilities;
2. The cover page of KNA's financial statements includes a statement disclosing the notes where the consolidating summary financial information can be found; and
3. Keystone ULC's obligations under the Subordinated Notes continue to be guaranteed by one or more wholly-owned subsidiaries of KNA and the guarantees are joint and several.

"Cameron McInnis"
Manager, Corporate Finance
Ontario Securities Commission

2.1.2 Front Street Long/Short Income Fund II - s. 83

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act R.S.O. 1990, c.s.5, as am., s. 83 - Applicant is seeking relief to be deemed to have ceased to be a reporting issuer in compliance with the requirements set out in CSA Notice 12-307- Applicant no longer requires to be a reporting issuer and satisfies all the requirements set out in CSA Notice 12-307

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.
CSA Staff Notice 12-307 - Ceasing to be a Reporting Issuer under the Mutual Reliance Review System for Exemptive Relief Applications. (2003) 26 OSCB 6348.

August 14, 2006

Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street, Suite 2800
Toronto, Ontario
M5L 1A9

Attention: Stacy McLean

Dear Sirs / Mesdames:

Re: Front Street Long/Short Income Fund II (the "Applicant")

Re: Application to cease to be a reporting issuer under the securities legislation of Ontario, Saskatchewan, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

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 be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*;

3. the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any 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.

"Leslie Byberg"
Manager, Investment Funds

2.1.3 USC Education Savings Plans Inc. - MRRS Decision

Headnote

MRRS for exemptive relief applications- Exemption from Annual Information Plan Requirements of Part 9 of National Instrument 81-106 (NI 81-106) -Issuer wants relief from the AIF requirements for its discontinued plans –Since the current prospectus for the Filer's plans that are in current distribution includes all material information that an AIF would require for the Discontinued Plans, the costs of complying with Part 9 of NI 81-106 far outweigh the benefits- The issuer will provide alternative disclosure in its current prospectus for its other plans in current distribution and also provide material details of any significant differences between plans in distribution and those discontinued – The Issuer will also provide, without charge, to any investor, within ten days after the Issuer receives the request, a copy of the most recent current prospectus for its plans in current distribution.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 9.2, 17.1.

August 15, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT
(The Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
USC EDUCATION SAVINGS PLANS INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the annual information form (AIF) requirements in the Legislation (the AIF Requirements).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-401 *Definitions* have the same meaning in this decision unless they are defined in the decision.

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*.

2. Each of the following scholarship plans (each, a Plan and, collectively, the Plans) is administered by the Filer:

   (a) USC Family Group Education Savings Plan (the Family Group Plan);

   (b) USC Family Single Student Education Savings Plan (the Family Single Student Plan);

   (c) USC Family Multiple Student Education Savings Plan (the Family Multiple Student Plan and together with the Family Single Student Plan, the Active Individual Savings Plans);

   (d) USC Horizon Education Savings Plan (the Horizon Plan);

   (e) USC Classic Education Savings Plan (the Classic Plan);

   (f) USC Family Multiple Student "Grandfathered" Education Savings Plan (the Multiple Grandfathered Plan); and

   (g) USC Family Single Student "Grandfathered" Education Savings Plan (the Single Student Grandfathered Plan and together with the Multiple Grandfathered Plan, the Grandfathered Plans).

   The Classic Plan and the Grandfathered Plans are hereinafter collectively referred to as the Discontinued Plans. The Family Group Plan, the Family Single Student Plan, the Family Multiple Student Plan and the Horizon Plan are hereinafter collectively referred to as the Active Plans.

3. Each of the trusts that has offered a Plan or is currently offering a Plan is a reporting issuer or the equivalent thereof as defined in the securities legislation of each Jurisdiction, where such status exists.

4. Each of the Discontinued Plans is an investment fund in the Jurisdictions for the purposes of National Instrument 81-106 - *Investment Fund Continuous Disclosure* (NI 81-106).

5. Each of the Active Plans is an investment fund for the purposes of NI 81-106.

6. The current offering of the Plans (other than the Discontinued Plans) is being made pursuant to a prospectus dated August 30, 2005, in respect of the continuous offering of education savings plan agreements.

7. Scholarship plan agreements evidencing interests in the Discontinued Plans are no longer being offered for sale, and therefore there is no current prospectus for the Discontinued Plans. Sales of interests in the Discontinued Plans ceased on the respective dates set out below:

   (a) Classic Plan: August 22, 2000; and

   (b) Grandfathered Plans: August 13, 1999.

8. The Discontinued Plans are scholarship plans. These plans are structured as long term savings plans designed to help the contributors (each, a Subscriber) save amounts to assist the beneficiary designated by the Subscriber in paying for the expenses of the beneficiary's post-secondary education.

9. Each Subscriber committed in their respective scholarship plan agreements to make contributions to a Plan in accordance with a predetermined deposit schedule. The deposit schedules for scholarship plans such as the Discontinued Plans are designed to generate approximately the same amount of income per unit for all beneficiaries of contributors to the same plan who are expected to commence their post-secondary education in the same year. This is the year in which a Subscriber’s scholarship plan agreement matures and is the basis for determining the year (a Year of Eligibility) in which the beneficiaries of scholarship plan agreements maturing in the same year will become eligible to collect their first education assistance payments (each, an EAP).

10. The principal contributed to a Discontinued Plan by a Subscriber is returned to the Subscriber after the maturity date specified in the Subscriber's scholarship plan agreement. For the Classic Plan, at the maturity date, income earned on contributions made in respect of beneficiaries sharing the same Year of Eligibility is pooled in a fund (an EAP Fund) out of which EAPs are made

to these beneficiaries subsequent to enrolment as students in a qualifying educational program. The EAPs may also include (i) a share of income earned on contributions made by other Subscribers with beneficiaries sharing the same Year of Eligibility whose participation in the same Plan terminated before maturity or whose beneficiaries did not claim the maximum number of EAPs and (ii) discretionary amounts that may be paid by The International Scholarship Foundation out of its general funds.

11. A beneficiary of a Subscriber to a Discontinued Plan is eligible to receive EAPs out of the applicable EAP Fund, representing the beneficiary's interest in the fund together with the corresponding amount of government grants (and income earned thereon) that have been contributed to the Plan for the beneficiary.

12. All of the Classic Plan scholarship plan agreements will have reached their maturity dates as of 2019. The final EAPs will be paid to beneficiaries of the Classic Plan in 2022, following which the Classic Plan will be wound up. All of the Grandfathered Plans scholarship plan agreements will have reached their maturity dates as of 2016. The final EAPs will be paid to beneficiaries of the Grandfathered Plans in 2024, following which the Grandfathered Plans will be wound up.

13. While a Subscriber is entitled to a repayment of principal in the event of the early termination of a scholarship plan agreement, the income earned on the amount of that principal is forfeited unless the Subscriber transfers all amounts held in the Subscriber's accounts under the Classic Plan to an Active Plan.

14. The Filer intends to continue to annually file a renewal prospectus to permit the continued offering of the Active Plans or another scholarship plan that operates on similar terms and conditions as the Active Plans.

15. The renewal prospectuses for the Active Plans will contain all material information that would otherwise have been included in the AIF for the Discontinued Plans.

16. The significant differences between the Discontinued Plans and Active Plans occur in the following areas:

    (a) The Classic Plan is a group savings plan that operates on substantially similar terms and conditions as the Family Group Plan currently being offered by Prospectus with the following significant differences:

        (i) the contribution frequency and amounts were determined with reference to the contribution schedule in effect at that time for that plan;

        (ii) the criteria that must be met by a child to qualify for an EAP are more stringent in the case of the Classic Plan in that the qualifying educational program must be a member of the Association of Universities and Colleges of Canada, the Association of Canadian Community Colleges or their equivalent;

        (iii) the age limit for substitution of a beneficiary is 13 years old in the case of the Classic Plan;

        (iv) income earned in the Classic Plan cannot be transferred to another RESP;

        (v) an amount equivalent to the enrolment fee paid in respect of units of the Classic Plan is not refundable.

    (b) The Grandfathered Plans are individual savings plans that operate on substantially similar terms and conditions as the Active Individual Savings Plans currently being offered by Prospectus with the following significant differences:

        (i) the Grandfathered Plans are not eligible to collect government RESP grants; and

        (ii) section 146.1(2)(g.1)(ii) of the *Income Tax Act* in respect of the $5000 EAP limit does not apply to these plans.

17. Section 9.2 of NI 81-106 requires an investment fund that does not have a current prospectus as at its financial year-end to file an AIF.

18. Most investment funds follow a disclosure regime that allows them to omit information from their prospectuses provided that this information is accessible to investors and prospective investors in an AIF. Scholarship plans are not permitted to use this simplified system and there is no requirement for scholarship plans to include the information required by the form for an AIF in a prospectus.

Decision

Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation of each Jurisdiction is that the Filer shall not be required to prepare and file an AIF for the Discontinued Plans in accordance with the AIF Requirement, provided that:

(a) the renewal prospectus for the Active Plans discloses the material details of the significant differences between the Discontinued Plans and the Active Plans;

(b) at the request of a Subscriber to a Discontinued Plan, the Filer will send, without charge, to the Subscriber within ten days after the Filer receives the request, a copy of the most recent prospectus for the Active Plans; and

(c) for each Jurisdiction, this decision shall terminate one year after the coming into force of any rule or other regulation under the Legislation of the Jurisdiction that relates, in whole or in part, to continuous disclosure applicable to scholarship plans.

"Leslie Byberg"
Manager, Investment Funds Branch
Ontario Securities Commissions

2.1.4 BFI Canada Income Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Application by an issuer for a decision that certain portions of three material contracts filed in connection with a prospectus be held in confidence for an indefinite period by the Decision Makers, to the extent permitted by law - relief granted - the issuer is permitted to file on SEDAR versions of the contracts in which provisions containing commercially sensitive information have been redacted – the issuer did not request confidentiality during the prospectus review process as the confidential information was not known or finalized at the time of the issuance of a receipt - the confidential information does not contain information that would be material to an investor.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 140(2).

July 19, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR
(THE JURISDICTIONS)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
BFI CANADA INCOME FUND
(THE FILER)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that certain portions of the following three material contracts be held in confidence for an indefinite period by the Decision Makers, to the extent permitted by law:

(i) asset purchase agreement dated December 11, 2004 among BFI Canada Inc., BFI Canada Holdings Inc. and Waste Management of Canada Corporation (the **Ridge Agreement**);

(ii) second amended and restated credit agreement dated as of January 21, 2005 among BFI Canada Holdings Inc., certain lenders and Canadian Imperial Bank of Commerce (the **Canadian Credit Agreement**); and

(iii) amended and restated revolving credit and term loan agreement dated as of January 21, 2005 among IESI Corporation, certain lenders, Bank of America, N.A., Banc of America Securities LLC, CIBC Inc. and Lasalle Bank National Association (the **US Credit Agreement** and together with the Ridge Agreement and the Canadian Credit Agreement, the **Material Contracts**),

(the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

(b) this MRRS decision document represents the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions that provides for a reporting issuer regime.

2. The head office of the Filer is located in Toronto, Ontario.

3. On December 20, 2004, the Filer filed a final short-form prospectus dated December 20, 2004 (the **Final Prospectus**) with each of the Jurisdictions.

4. On December 22, 2004, final receipts were issued by the Decision Makers in the Jurisdictions for the Final Prospectus.

5. Under the Legislation, the Filer is required to file through the System for Electronic Document Analysis and Retrieval (**SEDAR**) copies of all material contracts identified in the Final Prospectus concurrently with the filing of the Final Prospectus and is required to make such material contracts available for inspection during the distribution of the securities offered under the Final Prospectus.

6. In connection with the filing of the Final Prospectus, the Filer filed the Ridge Agreement as a material contract. Although the Ridge Agreement included several schedules and exhibits, the Filer did not file several of those schedules at the time it filed the Ridge Agreement as the Filer believed that certain information contained in Schedules IV, VII, IX, XII and Exhibits A and B of the Ridge Agreement disclosed competitive, financial and personal information and that disclosure of such information would be seriously prejudicial to the interests of the Filer.

7. At the time of filing the Final Prospectus, the Filer undertook to file all material contracts identified in the Final Prospectus that were not filed concurrently with the Final Prospectus, including the US Credit Agreement and Canadian Credit Agreement, not later than the closing of the offering contemplated by the Final Prospectus. In January and February 2005, the Filer filed all material contracts identified in the Final Prospectus other than those that had previously been filed through SEDAR and the Material Contracts.

8. The Filer is not in default of its obligations under the Legislation (other than its delay in filing the Material Contracts).

9. There is no change in the material facts contained in the Material Contracts since the date of filing the Final Prospectus, other than the refinancing of the indebtedness under the Canadian Credit Agreement and the US Credit Agreement and the reorganization of the Fund's indirect investment in the Ridge landfill, which changes have been disclosed in the Fund's ordinary course continuous disclosure filings. The Final Prospectus contains full disclosure of all material facts concerning the Material Contracts.

10. Each of the Material Contracts includes schedules which set forth information relating to one or more of the following:

(i) the operation of the Ridge landfill which information was subject to restrictions on disclosure prior to the acquisition of the landfill by the Fund under an order of the Competition Bureau;

(ii) tenancy agreements with individuals;

(iii) telephone numbers and employee names;

(iv) future disposal activities; and

(v) pricing information and related financing terms,

(together the **Confidential Information**).

11. The Filer believes that public access to the Confidential Information would be seriously prejudicial to the interests of the Filer and that such disclosure is not necessary in the public interest.

12. The Confidential Information does not contain information in relation to the Filer or securities of the Filer that would be material to an investor.

13. In connection with this application, the Filer has provided the Decision Makers with (i) unredacted copies of the Material Contracts and (ii) redacted copies of the Material Contracts which are identical to the Material Contracts, except that the Confidential Information has been removed (the **Redacted Contracts**).

14. But for the reasons discussed below, under section 15.1 of OSC Rule 41-501 General Prospectus Requirements (**Rule 41-501**), relief could have been made sought from any of the requirements in Rule 41-501, including any relief from the requirements in paragraph 13.3(1)6 and section 13.6 of Rule 41-501, before the filing of the Final Prospectus. Relief was not sought under Rule 41-501 because the Confidential Information was not yet known or finalized as (i) in the case of the US Credit Agreement and the Canadian Credit Agreement, the Material Contracts were in the process of being drafted or negotiated and (ii) in the case of the Ridge Agreement, the terms on which disclosure of the agreement could be made had not been settled. As a result, this application was made subsequent to the filing of the Final Prospectus.

Decision

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Filer files through SEDAR copies of the Redacted Contracts that will be made publicly available by the Decisions Makers and posted on www.sedar.com.

"Erez Blumberger"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Kick Energy Corporation - s. 83

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.

Citation: Kick Energy Corporation, 2006 ABASC 1595

August 15, 2006

Burnet, Duckworth & Palmer LLP
1400, 350 7th Ave SW
Calgary, AB T2P 3N9

Attention: Frederick Davidson

Dear Sir:

Re: Kick Energy Corporation (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and New Brunswick (the "Jurisdictions")

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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

3. the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. 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 in the Jurisdictions.

Relief requested granted on the 15th day of August, 2006.

"Agnes Lau"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.6 Sara Lee Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – trades by an issuer to its shareholders in securities of a new company that will be spun off into an entirely separate entity (spin-off transaction) – after the spin-off transaction, the issuer will not retain any ownership interest in the new company - the issuer will distribute the shares of the new company as a dividend to the issuer's Canadian resident shareholders on a pro rata basis – the issuer is not a reporting issuer and the new company does not intend on becoming a reporting issuer – the issuer has a de minimis connection to Canada – as a result of the transfer, the shareholders of the issuer will hold their interests in the new company directly as opposed to indirectly through their shareholdings of the issuer – relief from prospectus and dealer registration requirements for distribution to Canadian shareholders and for resale of shares.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1).

Applicable National Instrument

National Instrument 45-106 Prospectus and Registration Exemptions, ss. 2.11, 2.31.

August 4, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,
NUNAVUT, NORTHWEST TERRITORIES,
YUKON, PRINCE EDWARD ISLAND,
NOVA SCOTIA AND NEWFOUNDLAND
(the "Jurisdictions")

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
SARA LEE CORPORATION
(the "Filer")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation")

for an exemption from the dealer registration requirements and the prospectus requirements (respectively the "Prospectus Requirements" and the "Registration Requirements") as defined in National Instrument 14-101 *Definitions* contained in the Legislation. Specifically, the Filer requests that the Prospectus Requirements and the Registration Requirements shall not apply to the proposed issuance of securities of Hanesbrands (defined below) to holders of common stock of the Filer resident in Canada (the "Canadian Shareholders") as part of the Spin-Off (as defined below) (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. Filer is a publicly traded Maryland corporation that is a global manufacturer of brand-name products throughout the world. Its principal executive offices are located in Chicago, Illinois.

2. The Filer is not a reporting issuer under the securities laws of any province or territory of Canada and has no intention of ever becoming a reporting issuer under the securities laws of any province or territory of Canada.

3. The shares of the Filer are listed on the New York Stock Exchange (the "NYSE") and are not listed on any Canadian stock exchange.

4. As of May 13, 2006 the Filer had 1,016 holders of record of common stock resident in Canada (377 in Ontario, 473 in Quebec, 35 in Alberta, 73 in British Columbia, 13 in Manitoba, 13 in Nova Scotia, 10 in New Brunswick, 12 in Saskatchewan, 7 in Newfoundland and 2 in Prince Edward Island), which constitute approximately 1.24% of the approximately 82,175 holders of record of common stock of the Filer worldwide. On that date, Canadian Shareholders collectively held 444,778.648 shares of common stock of the Filer, which constitute approximately 0.058% of the estimated total number of the Filer's outstanding shares of approximately 760,136,000. As such, the proportion of common stock of the Filer held by Canadian Shareholders is *de minimis*.

5. The Filer has represented that, as of September 22, 2005, based on the number of proxy materials mailed for the 2005 annual meeting of shareholders, there are approximately 1,455 beneficial shareholders in Canada, which also demonstrates that the number of Canadian resident beneficial shareholders of common stock of the Filer is *de minimis*.

6. Subject to obtaining necessary approvals, in or around August 2006, the Filer will split itself into two independent, publicly-traded companies through a tax neutral spin-off transaction (the "Spin-Off"). The Spin-Off, which is being reviewed by the United States Securities and Exchange Commission (the "SEC"), consists of the following steps:

   (a) The Filer will transfer substantially all of its assets, liabilities and operations of its Branded Apparel Americas/Asia business into an independent company. The new entity is called Hanesbrands Inc. ("Hanesbrands") and is incorporated under the laws of Maryland.

   (b) The Filer will distribute by dividend to each of its shareholders one share of Hanesbrands common stock for a specified number of shares of Filer common stock held by such shareholder (with the ratio to be obtained shortly before the dividend is declared).

   (c) The Filer's shareholders will not be required to pay for the Hanesbrands common stock received in the distribution, or to surrender or exchange the Filer's securities to receive Hanesbrands common stock or to take any other action in connection with the distribution.

7. After the Spin-Off, the Filer will continue to be listed and traded on the NYSE. Hanesbrands has been cleared to file a listing application with the NYSE and expects to apply for listing before the Spin-Off is complete.

8. Neither the Filer nor Hanesbrands intends to list its shares on any stock exchange in Canada. Hanesbrands does not currently intend to become a reporting issuer in any province or territory in Canada.

9. The dividend and Spin-Off will be effected in compliance with Maryland law and the transaction will be reviewed by the SEC.

10. Because the Spin-Off of Hanesbrands will be by way of dividend to the Filer's shareholders, no shareholder approval of the proposed transaction is required under Maryland law.

11. All materials relating to the Spin-Off and the dividend sent by or on behalf of the Filer or Hanesbrands in the United States will be sent concurrently to the Canadian Shareholders and a copy thereof will be filed with each of the local securities regulators in each of the provinces and territories of Canada.

12. Following the Spin-Off, the Filer will send concurrently to the Canadian Shareholders, the same disclosure materials that it sends to holders of the Filer and Hanesbrands shares with addresses, as shown on its books to be, in the United States.

13. The Canadian Shareholders who receive Hanesbrands shares as a dividend pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the dividend and Spin-Off that are available under the laws of the United States to Hanesbrands shareholders with addresses in the United States.

14. The proposed distribution of Hanesbrands common stock to the Canadian Shareholders pursuant to the Spin-Off would be exempt from the Prospectus and Registration Requirements pursuant to 2.31(2) and (3) of National Instrument 45-106 Prospectus and Distribution Exemptions but for the fact that Hanesbrands is not a reporting issuer or equivalent under the Legislation.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the first trade of Hanesbrands shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in section 2.6 or 2.14(1) of National Instrument 45-102 – *Resale of Securities* are satisfied.

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Paul K. Bates"
Commissioner
Ontario Securities Commission

2.1.7 Sirit Inc. - MRRS Decision

Headnote

Mutual reliance review system for exemptive relief applications – National Instrument 51-102 Continuous Disclosure Obligations - significant acquisition through court-ordered receivership process – issuer does not have access to historical accounting records of acquired business and cannot produce certain interim financial statements for acquired business – issuer granted relief from the requirement to include certain interim financial statements in the business acquisition report, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, Part 8 and s. 13.1.
Companion Policy to National Instrument 51-102 – Continuous Disclosure Obligations, s. 8.9(4)(b).

August 18, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
YUKON TERRITORY, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR AND NEW BRUNSWICK (the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
SIRIT INC. (the Filer)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement to include certain interim financial statements in a business acquisition report (the BAR) required to be filed under Part 8 of National Instrument 51-102 (NI 51-102) in connection with the Filer's acquisition of all of the assets of SAMSys Technologies Inc. (Samsys) pursuant to a receivership process (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer was incorporated in the province of British Columbia pursuant to the *Company Act* (British Columbia) on January 15, 1987. On July 27, 1998, the Filer was continued into the Yukon under the Yukon *Business Corporations Act*. On May 5, 2003, the Filer changed its name from iTECH Capital Corp. to Sirit Inc. to better reflect its current form of business. The Filer's head office is located in Toronto, Ontario.

2. The Filer's business is the design, development, manufacturing and sale of radio frequency identification products and solutions.

3. The Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions, British Columbia and Prince Edward Island and, to the best of its knowledge, except for not filing the BAR, the Filer is not in default of any applicable requirements under the securities legislation of the Jurisdictions.

4. The authorized capital of the Filer consists of an unlimited number of common shares and 100 million preferred shares. As of July 12, 2006, 145,523,786 common shares and no preferred shares are issued and outstanding.

5. The common shares of the Filer are listed for trading on the Toronto Stock Exchange under the symbol "SI".

6. Samsys was in the business of providing radio frequency identification reader solutions. Samsys was a reporting issuer in Ontario, British Columbia, Alberta and Quebec, and its shares were listed for trading on the Toronto Stock Exchange under the symbol "SMY".

7. On February 24, 2006, Samsys issued a press release confirming that it had repaid $2,000,000 of the principal amount outstanding under its secured debenture issued on August 31, 2005 (the Debenture) to Fund 321 Limited Partnership doing business as Wellington Financial Fund II (the Secured Creditor).

8. On February 27, 2006, Samsys issued a material change report which stated, among other things, that the repayment of the $2,000,000 principal amount under the Debenture was necessitated by a financial covenant contained in the Debenture which required such repayment if Samsys' revenue for the quarter ended December 31, 2005 did not meet certain thresholds.

9. On March 28, 2006, Samsys issued a press release announcing that it had received a notice of default from the Secured Creditor, which notice of default alleged that a non-payment related event of default had occurred under the terms of the Debenture.

10. On or about March 30, 2006, the Filer and the Secured Creditor entered into negotiations relating to the potential purchase of the Samsys assets by way of a court-appointed receivership process (the Receivership Process).

11. On April 5, 2006, the Filer and the Secured Creditor entered into a letter agreement (the Agreement) which provided for the purchase of the Samsys assets and undertaking by the Filer pursuant to a Receivership Process. Samsys acknowledged and agreed to the terms of the Agreement, but was not involved in the negotiation of the Agreement.

12. The Agreement contemplated the sale by Samsys and its Canadian subsidiaries of all their assets, including the shares of their U.S. subsidiaries, to the Filer, but the transaction was subject to certain conditions, including the appointment of a receiver by the Ontario Superior Court of Justice (the Court) and the closing of the transaction by April 13, 2006.

13. The Agreement provided that Samsys would provide access to its premises and its books, records and reports, as well as access for interviews of its personnel. However, the Filer's actual access to Samsys' books, records and reports and personnel was limited due to Samsys' multiple locations and the limited time frames provided for in the Agreement. Under the terms of the Agreement, Samsys was not required to make the historical accounting records available to the Filer.

14. On April 13, 2006, pursuant to an appointment and vesting order issued by the Court (the Court Order) pursuant to the Receivership Process initiated by the Secured Creditor, Samsys was placed into receivership (the Receivership) and PricewaterhouseCoopers Inc. was appointed as interim receiver (the Interim Receiver).

15. On April 13, 2006, pursuant to the Court Order, the terms of the Agreement were approved by the Court and the Filer completed the purchase of the assets and undertaking of Samsys from the Interim Receiver (the Receivership Purchase).

16. The Filer paid the Interim Receiver cash consideration of $4,000,000 plus transaction costs and accrued interest under the Secured Creditor's Debenture in connection with the Receivership Purchase pursuant to the Agreement.

17. The purchase price for the Receivership Purchase was negotiated between the Filer and the Secured Creditor to reflect the value of the Samsys assets, and the purchase price was approved by the Court.

18. On April 28, 2006, the Interim Receiver was discharged by the Court such that it had no further responsibilities relating to the Samsys assets.

19. The Filer, the Secured Creditor, the Interim Receiver and Samsys were arm's-length parties.

20. The Receivership Purchase constitutes a "significant acquisition" for the Filer for the purposes of NI 51-102, requiring the Filer to file a BAR pursuant to sections 8.2 and 8.5(1)2 of NI 51-102.

21. Pursuant to section 8.4 of NI 51-102, the BAR must be accompanied by certain financial statements, including:

    a) audited annual financial statements for Samsys for the years ended September 30, 2005 and 2004, together with the auditors' report thereon and notes thereto;

    b) interim financial statements for Samsys for the six month period beginning on October 1, 2005 and ending March 31, 2006 together with comparative interim financial statements for the six month period ended March 31, 2005 (the BAR Interim Financial Statements);

    c) a pro forma balance sheet for the Filer as at March 31, 2006; and

    d) pro forma income statements for the Filer for the year ended December 31, 2005 and for the three month period ended March 31, 2006

    (the BAR Financial Statements).

22. The Filer proposes to include the following financial statements in the BAR:

    a) audited annual financial statements for Samsys for the years ended September 30, 2005 and 2004, together with the auditors' report thereon and notes thereto;

    b) interim financial statements for Samsys for the three month period beginning on October 1, 2005 and ending December 31, 2005 together with comparative interim financial statements for the three month period ended December 31, 2004 (the Samsys First Quarter Statements);

    c) a pro forma balance sheet for the Filer as at March 31, 2006, based on the Samsys First Quarter Statements; and

    d) pro forma income statements for the Filer for the year ended December 31, 2005 and for the three month period ended March 31, 2006, based on the Samsys First Quarter Statements

    (the Proposed BAR Financial Statements).

23. Samsys had prepared and filed the Samsys First Quarter Statements prior to the Receivership.

24. Samsys was not required to file the interim financial statements for its second quarter ending on March 31, 2006 (the Samsys Second Quarter Statements) until May 15, 2006, more than a month after the date of the Receivership.

25. Upon the completion of the Receivership Purchase by the Filer, the Filer was advised that Samsys and its Canadian subsidiaries had ceased all operations and no longer employed any employees, all of the directors and officers of Samsys had resigned, and there was no management in place at Samsys to prepare the Samsys Second Quarter Statements.

26. Subsequent to the Receivership Purchase, the Filer made every reasonable effort to obtain access to, or copies of, the historical accounting records of Samsys necessary to prepare the Samsys Second Quarter Statements but such efforts were unsuccessful since Samsys had ceased its operations, the historical accounting records obtained by the Filer were incomplete and there were no Samsys management or employees to assist in providing complete, accurate and reliable records to the Filer.

27. The Filer has been advised by the former chief financial officer of Samsys that he is unable to compile the Samsys Second Quarter Statements.

28. The Filer has been advised by the former auditors of Samsys that they are unable to compile the Samsys Second Quarter Statements. The Samsys former auditors advised the Filer that they would require the assistance of prior Samsys management who would be familiar with the consolidation process as well as the compilation process to complete the compilation, and they advised that they did not have sufficient detailed

familiarity with the internal accounting ledgers and methodologies of Samsys to prepare the requested statements.

29. The Filer is unable to prepare the Samsys Second Quarter Statements required under section 8.4 of NI 51-102 for the BAR.

30. Consequently, the BAR Interim Financial Statements include the Samsys First Quarter Statements only.

31. Apart from the requirement to include the Samsys Second Quarter Statements, the Filer is otherwise able to prepare and file the BAR (including the BAR Financial Statements), provided that the pro forma statements to be included in the BAR are based on the Samsys First Quarter Statements and not the Samsys Second Quarter Statements. The Filer will include in the BAR additional disclosure requirements as set out under section 8.9(4)(b) of the Companion Policy of NI 51-102.

Decision

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 that this Decision evidences the decision of each of the Decision Makers.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

(a) the Filer discloses in the BAR:

  (i) the fact that the Receivership Purchase was made pursuant to a Receivership Process approved by the Court;

  (ii) based on the fact that the Filer made every reasonable effort to obtain the historical accounting records of Samsys but such efforts were unsuccessful, current management of the Filer and the Filer are effectively denied access to the historical accounting records of Samsys necessary to prepare the Samsys Second Quarter Statements; and

(b) The Filer files with the BAR (i) audited annual financial statements for Samsys for the years ended September 30, 2005 and 2004, together with the Auditor's Report thereon and notes thereto, (ii) the Samsys First Quarter Statements, (iii) a pro forma balance sheet for the Filer as at March 31, 2006, which is based on the Samsys First Quarter Statements, (iv) pro forma income statements for the Filer for the year ended December 31, 2005 and for the three-month period ended March 31, 2006, based on the Samsys First Quarter Statements, and (v) the accompanying compilation report signed by the Filer's auditors.

"Cameron McInnis"
Manager, Corporate Finance
Ontario Securities Commission

2.1.8 Stornoway Diamond Corporation - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Identical consideration - Issuer needs relief from the requirement in s. 107 (1) of the Act that all holders of the same class of securities must be offered identical consideration - Under the bid, Canadian resident shareholders may receive securities, cash, or a combination of both; U.S resident shareholders will receive substantially the same value as Canadian shareholders, in the form of cash paid to the U.S shareholders based on the proceeds from the sale of their securities; the number of shares held by U.S residents is de minimis; the U.S does not have an identical consideration requirement.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(1), 114(2).

August 14, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, MANITOBA,
NEW BRUNSWICK, NEWFOUNDLAND AND
LABRADOR, NOVA SCOTIA, ONTARIO,
QUÉBEC AND SASKATCHEWAN
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
STORNOWAY DIAMOND CORPORATION
(the Filer)

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement under the Legislation to offer identical consideration (the Identical Consideration Requirement) to all the holders of the same class of securities that are subject to a take-over bid (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

2. Defined terms herein contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. the Filer is a company existing under the *Business Corporations Act* (British Columbia);

2. the Filer's head office is located in British Columbia;

3. the Filer is a reporting issuer in British Columbia, Alberta, Manitoba, Ontario and Québec and is not in default of any of the requirements of the Legislation;

4. the authorized capital of the Filer consists of an unlimited number of common shares (the Filer's Shares), of which, as of July 20, 2006, there were 80,915,671 Filer Shares outstanding;

5. the Filer's Shares are listed on the Toronto Stock Exchange (TSX);

6. on July 24, 2006, the Filer issued a press release announcing its intention to make an offer (the Offer) to acquire all of the outstanding common shares (Contact Shares) of Contact Diamond Corporation (Contact);

7. Contact is a company existing under the *Business Corporations Act* (Ontario);

8. Contact's head office is located in Ontario;

9. Contact is a reporting issuer in all provinces and territories of Canada and, to the knowledge of the Filer, is not in default of any of the requirements of the Legislation;

10. the authorized capital of Contact consists of an unlimited number of Contact Shares;

11. the Contact Shares are listed on the TSX;

12. to the knowledge of the Filer, after reasonable inquiry, as of June 7, 2006, there were 43,873,365 Contact Shares outstanding, of which 3,473,309 (approximately 8%) were held by U.S. residents (Contact US Shareholders);

13. under the terms of the Offer, each holder of a Contact Share resident in Canada will receive consideration per Contact Share of 0.36 of a Filer Share, subject to adjustment as described in the Offer;

14. the Filer's Shares issuable under the Offer will not be registered or otherwise qualified for distribution under the securities legislation of the United States; the delivery of the Filer's Shares to Contact US Shareholders, without further action by the Filer, could constitute a violation of the laws of the United States;

15. the Filer proposes to deliver to the depositary under the Offer (the Depositary) the Filer's Shares which Contact US Shareholders would otherwise be entitled to receive under the Offer; the Depositary will sell those Filer's Shares by private sale or on any stock exchange on which the Filer's Shares are then listed after the payment date for the Contact Shares tendered by the Contact US Shareholders under the Offer; after completion of the sale, the Depositary will distribute the aggregate net proceeds of the sale, after expenses, *pro rata* among the Contact US Shareholders that tendered their Contact Shares under the Offer;

16. if the Filer increases the consideration offered to holders of Contact Shares resident in Canada, the increase in consideration will also be offered to Contact US Shareholders at the same time and on the same basis;

17. any sale of the Filer's Shares described in paragraph 15 above will be completed as soon as possible after the date on which the Filer takes up the Contact Shares tendered by the Contact US Shareholders under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable Contact Foreign Shareholder and minimize any adverse impact of the sale on the market for the Filer's Shares; as soon as possible after the completion of the sale, the Depositary will send to each Contact US Shareholder a cheque equal to that Contact US Shareholder's pro rata share of the proceeds of the sale, net of sales commissions and applicable withholding taxes;

18. the takeover bid circular to be prepared by the Filer and sent to all shareholders of Contact will disclose the procedure described in paragraph 15 to be followed for Contact US Shareholders who tender their Contact Shares to the Offer; and

19. except to the extent that relief from the Identical Consideration Requirement is granted, the Offer will comply with the requirements under the Legislation concerning take-over bids.

Decision

4. 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.

   The decision of the Decision Makers under the Legislation is that, in connection with the Offer, the Requested Relief is granted so that Contact US Shareholders who tender their Contact Shares to the Offer receive instead cash proceeds from the sale of the Filer's Shares in accordance with the procedure set out in representation 15.

"Martin Eady, CA"
Director, Corporate Finance
British Columbia Securities Commission

2.1.9 Petrofund Energy Trust - s. 83

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.

Citation: Petrofund Energy Trust, 2006 ABASC 1563

August 2, 2006

Burnet, Duckworth & Palmer
1400, 350 7th Ave. SW
Calgary, AB T2P 3N9

Attention: James Kidd

Dear Sir:

Re: Petrofund Energy Trust (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the "Jurisdictions")

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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

3. the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. 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 in the Jurisdictions.

Relief requested granted on the 2nd day of August, 2006.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.10 Bombardier Capital Ltd. - s. 83

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.

Montréal, August 22, 2006

Bombardier Capital Ltd.
29th Floor, 800, René-Lévesque Blvd. West
Montréal (Québec) H3B 1Y8
Attention: Mr. Roger Carle
Corporate Secretary

Re: Bombardier Capital Ltd. (the "Applicant") - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

Dear Sir:

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 to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- 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.

"Louis Auger"
Chef du Service du financement des sociétés

2.1.11 CIBC Mutual Funds (listed in Appendix A) - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Exemptive relief granted to mutual funds allowing extension of prospectus lapse date, and extension of distribution beyond previous lapse date for certain funds for new funds introduced.

Applicable Statutory Provisions

Securities Act R.S.O 1990, c. S.5, as am., s. 62(5).

August 1, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND and LABRADOR, YUKON AND NUNAVUT (the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
THE MUTUAL FUNDS LISTED IN APPENDIX A HERETO
(the "CIBC Mutual Funds")

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from Canadian Imperial Bank of Commerce ("**CIBC**"),as manager of the CIBC Mutual Funds, dated July 5, 2006, for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") that the lapse date for the CIBC Mutual Funds be extended to August 22, 2006 (the "**Lapse Date Relief**").

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:

   (a) the OSC is the principal regulator for the application for Lapse Date Relief, and

   (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. CIBC is the manager of the CIBC Mutual Funds, each of which is an open-ended investment trust established under the laws of Ontario pursuant to a declaration of trust.

2. Each of the CIBC Mutual Funds is a reporting issuer in each of the Jurisdictions and each of the CIBC Mutual Funds currently distributes its securities in each of the Jurisdictions on a continuous basis pursuant to a simplified prospectus and annual information form dated August 8, 2005, as amended by amendment no. 1 dated October 28, 2005 and amendment no. 2 dated December 9, 2005 (collectively, the "**CIBC Mutual Funds Prospectus**").

3. The lapse date for the CIBC Mutual Funds under the Legislation in all Jurisdictions except Quebec is August 8, 2006. The lapse date for the CIBC Mutual Funds under the Legislation in Quebec is August 11, 2006.

4. There have been no material changes in the affairs of any of the CIBC Mutual Funds since the filing of the CIBC Mutual Funds Prospectus, other than those for which amendments have been filed or for which amendments are not required. Accordingly, the CIBC Mutual Funds Prospectus represents current information regarding each of the CIBC Mutual Funds.

5. CIBC filed with the Decision Makers a pro forma simplified prospectus and annual information form for the CIBC Mutual Funds on May 2, 2006 (collectively, the "**Pro Forma Documents**").

6. The Pro Forma Documents also constitute the pro forma simplified prospectus and annual information form for mutual funds that are part of the family of the CIBC Family of Managed Portfolios for which CIBC also acts as manager. The lapse date for the CIBC Family of Managed Portfolios under the Legislation in all Jurisdictions except Quebec is October 7, 2006, and the lapse date for the CIBC Family of Managed Portfolios under the Legislation in Quebec is October 11, 2006.

7. All the comments received from the Decision Makers on the Pro Forma Documents have been addressed to the satisfaction of the Decision Makers. The CIBC Mutual Funds and the CIBC

Family of Managed Portfolios have been cleared by the Decision Makers to file the final simplified prospectus and annual information form (the "**Final Documents**").

8. CIBC intends to establish and make available for distribution to the public certain new mutual funds. These new mutual funds are expected to be named as CIBC Premium Money Market Fund, CIBC Global Monthly Income Fund, CIBC U.S. Equity Fund, CIBC International Equity Fund and CIBC Managed Monthly Income and Growth Portfolio (collectively, the "**New Funds**"). The New Funds will, among other things, have the same manager and trustee as CIBC Mutual Funds and CIBC Family of Managed Portfolios.

9. The necessary board approvals for the establishment of the New Funds were obtained on July 17, 2006. CIBC intends to file the preliminary simplified prospectus and annual information form for the New Funds (the "**Preliminary Documents**") on or about July 25, 2006.

10. In order to facilitate the distribution of the New Funds in the same manner as the CIBC Mutual Funds and the CIBC Family of Managed Portfolios, CIBC intends to integrate the New Funds into the Final Documents.

11. The Lapse Date Relief will allow the Decision Makers sufficient time to review and comment on the Preliminary Documents and for CIBC to prepare and file with the Decision Makers the Final Documents which will incorporate disclosure for the New Funds.

Decision

Each of the Decision Makers is satisfied that, based on the information and representations contained in this application and this decision that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation is that the Lapse Date Relief be granted.

"Leslie Byberg"
Manager, Investment Funds Branch

APPENDIX "A"

CIBC Mutual Funds

CIBC Canadian T-Bill Fund
CIBC Premium Canadian T-Bill Fund
CIBC Money Market Fund
CIBC U.S. Dollar Money Market Fund
CIBC High Yield Cash Fund
CIBC Mortgage and Short-Term Income Fund
CIBC Canadian Bond Fund
CIBC Monthly Income Fund
CIBC Global Bond Fund
CIBC Balanced Fund
CIBC Diversified Income Fund
CIBC Dividend Fund
CIBC Core Canadian Equity Fund
Canadian Imperial Equity Fund
CIBC Capital Appreciation Fund
CIBC Canadian Small Companies Fund
CIBC Canadian Emerging Companies Fund
CIBC U.S. Small Companies Fund
CIBC Global Equity Fund
CIBC European Equity Fund
CIBC Japanese Equity Fund
CIBC Emerging Economies Fund
CIBC Far East Prosperity Fund
CIBC Latin American Fund
CIBC International Small Companies Fund
CIBC Financial Companies Fund
CIBC Canadian Resources Fund
CIBC Energy Fund
CIBC Canadian Real Estate Fund
CIBC Precious Metals Fund
CIBC North American Demographics Fund
CIBC Global Technology Fund
CIBC Canadian Short-Term Bond Index Fund
CIBC Canadian Bond Index Fund
CIBC Global Bond Index Fund
CIBC Balanced Index Fund
CIBC Canadian Index Fund
CIBC U.S. Equity Index Fund
CIBC U.S. Index RRSP Fund
CIBC International Index Fund
CIBC International Index RRSP Fund
CIBC European Index Fund
CIBC European Index RRSP Fund
CIBC Japanese Index RRSP Fund
CIBC Emerging Markets Index Fund
CIBC Asia Pacific Index Fund
CIBC Nasdaq Index Fund
CIBC Nasdaq Index RRSP Fund

2.1.12 Lafarge Canada Inc. - s. 83

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 83.

Montreal, August 14, 2006

Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1A9

Attention: Mr. Shlomi Feiner

Dear Sir:

Re: Lafarge Canada Inc. (the "Applicant")
Application to Cease to be a Reporting Issuer under the securities legislation of Québec, Alberta, Nova Scotia, Ontario and Saskatchewan (the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Makers") in each of the Jurisdictions for a decision under the securities legislation (the "Legislation") of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- 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.

"Benoit Dionne"
Manager of the Corporate Financing Department
Autorité des marchés financiers

2.1.13 SMK Speedy International Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – s. 83 of Securities Act (Ontario) – Issuer has only one security holder – Issuer deemed to cease to be a reporting issuer under applicable securities laws.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S-5, as am., s. 83.

August 18 , 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
SMK SPEEDY INTERNATIONAL INC.

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of Ontario, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick and Newfoundland and Labrador (the Jurisdictions) has received an application from SMK Speedy International Inc. (the Applicant) for a decision under the securities legislation of the Jurisdiction (the Legislation) that the Applicant be deemed to have ceased to be a reporting issuer or the equivalent under the Legislation (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):

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

(b) this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meanings in this decision unless they are defined in this decision.

Representations

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

1. The Applicant was originally incorporated under the *Business Corporations Act* (Ontario) (the OBCA) under the name Speedy Muffler King Inc. by certificate of incorporation issued December 1, 1988. On January 7, 2004, the Applicant completed a plan of arrangement whereby a subsidiary of 578098 Alberta Ltd. (operating as Minute Muffler & Brake) acquired all of the issued and outstanding common shares (the Common Shares) of the Applicant (the Plan of Arrangement) and the Applicant was issued a certificate of arrangement under the OBCA on January 7, 2004.

2. The head office of the Applicant is located at Suite 1100, 365 Bloor Street West, Toronto, Ontario, M4W 3M7.

3. The authorized capital of the Applicant consists of an unlimited number of common shares of which 100 Common Shares are issued and outstanding.

4. The Applicant (or its predecessor) has been a reporting issuer in the Jurisdictions since July 14, 1993.

6. 578098 Alberta Ltd. became the sole owner of all of the Common Shares of the Applicant upon the issuance of the certificate of arrangement evidencing the Plan of Arrangement on January 7, 2004.

7. Pursuant to the Plan of Arrangement, shareholders of the Applicant received in the aggregate for their Common Shares:

   (a) $49,079,000 in cash;

   (b) $24,000,000 of principal amount of five year subordinated secured notes of the Applicant, $19 million of which had a total yield of 14% per annum with the remaining $5 million having money market yield (the Acquisition Notes); and

   (c) US$9,000,000 (or US$0.65 per share) principal amount of US dollar denominated limited recourse notes of the Applicant which bore interest at an effective rate of 2.33% per annum above the US prime rate (the T-Notes).

8. On March 3, 2006, the Applicant, with the approval of the holders of the T-Notes, assigned all of its rights and obligations under the T-Notes to Maple Trust Company.

9. On May 15, 2006, the Applicant, with the approval of the holders of the T-Notes, was fully released from all of its rights and obligations under the T-Notes.

10. In November 2005, the Applicant repaid $5 million of the Acquisition Notes and the holders of the Acquisition Notes agreed to the Applicant's proposal to repay the remaining Acquisition Notes by April 30, 2006.

11. On March 28, 2006, the holders of the Acquisition Notes agreed to a reduction in deferred interest owed under the Acquisition Notes in an amount of up to $1,400,000 to be determined by a pre-determined formula and to give the Applicant until May 15, 2006 to repay the Acquisition Notes.

12. On May 15, 2006, the Applicant repaid to the holders of the Acquisition Notes all of the amounts owing under the Acquisition Notes, other than the reduction of deferred interest in the amount of $900,000 which was determined pursuant to the formula agreed to on March 28, 2006.

13. All the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by one security holder, being 578098 Alberta Ltd.

14. The Common Shares commenced trading on the Toronto Stock Exchange (TSX) on July 14, 1993, and were quoted under the trading symbol "SMK".

15. As a result of the Plan of Arrangement, the Common Shares were delisted from the TSX in January, 2004.

16. No securities, including debt securities, of the Applicant are listed or traded on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

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

18. The Applicant is in default of its obligation as a reporting issuer under the Legislation to file annual financial statements, related management's discussion and analysis and certificates within 120 days of the end of its financial year ended December 31, 2005.

19. The Applicant is in default of its obligation as a reporting issuer under the Legislation to file interim financial statements, related management's discussion and analysis and certificates within 60 days of the end of its interim financial period ended March 31, 2006.

20. Other than as described in paragraphs 18 and 19, above, the Applicant is not in default of any of its obligations as a reporting issuer under the securities legislation of the Jurisdictions.

21. Upon the grant of the relief requested herein, the Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides that the Decision Maker with the jurisdiction to make the decision has been met.

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

"David L. Knight"

"Paul K. Bates"

2.2 Orders

2.2.1 Harvest Energy Trust et al. - s. 74

Headnote

Order that section 53 of the Act does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 Short Form Prospectus Distributions for securities to be issued pursuant to an over-allotment option, exercisable after the closing of the offering, granted by the issuer to the underwriters to purchase up to 15% of the securities offered under the offering.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 74, 53.
National Instrument 44-101 Short Form Prospectus Distributions.

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

AND

IN THE MATTER OF
HARVEST ENERGY TRUST

AND

CIBC WORLD MARKETS INC. AND
TD SECURITIES INC.,
NATIONAL BANK FINANCIAL INC.,
BMO NESBITT BURNS INC.,
RBC DOMINION SECURITIES INC.,
SCOTIA CAPITAL INC.,
TRISTONE CAPITAL INC.,
HSBC SECURITIES (CANADA) INC.,
CANACCORD CAPITAL CORPORATION AND
FIRSTENERGY CAPITAL CORP.

ORDER
(Section 74)

Background

The Ontario Securities Commission (the Commission) has received an application (the Application) from CIBC World Markets Inc. and TD Securities Inc., National Bank Financial Inc., BMO Nesbitt Burns Inc., RBC Dominion Securities Inc., Scotia Capital Inc., Tristone Capital Inc., HSBC Securities (Canada) Inc., Canaccord Capital Corporation and FirstEnergy Capital Corp. (the Underwriters) and Harvest Energy Trust (the Issuer) for an order pursuant to section 74 of the Securities Act (Ontario) (the Act) that section 53 of the Act does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) for securities to be issued pursuant to an over-allotment option, as defined below (the Requested Relief).

Interpretation

In this order,

"over-allotment option" means a right granted to the underwriters by an issuer or a selling security holder of the issuer in connection with the distribution of securities under a short form prospectus to acquire, for the purposes of covering the underwriters' over-allocation position, a security of an issuer that has the same designation and attributes as a security that is distributed under such short form prospectus, and that

(i) expires not later than the 60th day after the date of the closing of the distribution, and

(ii) is limited to the lesser of

A the over-allocation position determined as at the closing of the distribution, and

B 15% of the number or principal amount of the securities qualified for the distribution, without taking into account the securities issuable on the exercise of the over-allotment option; and

"over-allocation position" means the amount by which the aggregate number or principal amount of securities that are the subject of offers to purchase received by all underwriters of a distribution exceeds the aggregate number or principal amount of securities distributed by an issuer or selling securityholder under the prospectus, without taking into account the securities issuable on the exercise of an over-allotment option.

Representations

This order is based on the following facts represented by the Issuer and the Underwriters:

1. the purpose of an over-allotment option is to allow underwriters to conduct market stabilization activities in circumstances where the risk in so doing is protected by the existence of an over-allotment option;

2. over-allotment options are not designed to allow underwriters to sell additional securities after a prospectus has been filed or an underwriting agreement has been signed; and

3. underwriters would not accept the market risk in conducting market stabilization activities without having an over-allotment option.

Order

The Commission is satisfied that the test contained in the Act that provides the Commission with the jurisdiction to make the order has been met;

The decision of the Commission pursuant to section 74 of the Act is that the Requested Relief is granted provided that:

(a) the Issuer has entered into an enforceable agreement with the Underwriters, who have agreed to purchase the securities offered under a short form prospectus, other than the securities issuable on the exercise of an over-allotment option,

(b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the Issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,

(c) the Issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,

(d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities,

(e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained, and

(f) the relief granted will cease to be effective on the date when NI 44-101 is amended to permit solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to over-allotment options.

Confidentiality

The further decision of the Commission under the Act is that the Application and this decision shall be held in confidence by the Commission until the occurrence of the earliest of the following:

(a) the date on which a news release is issued by the Issuer announcing that the Issuer has entered into an enforceable agreement with the Underwriters with respect to the purchase of securities to be offered under a short form prospectus, and

(b) the date that is thirty days from the date of this decision.

Dated July 25, 2006

"Erez Blumberger"
Assistant Manager, Corporate Finance

2.2.2 Innova Exploration Ltd. et al. - s. 74

Headnote

Order that section 53 of the Act does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 Short Form Prospectus Distributions for securities to be issued pursuant to an over-allotment option, exercisable after the closing of the offering, granted by the issuer to the underwriters to purchase up to 15% of the securities offered under the offering.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 74, 53.
National Instrument 44-101 Short Form Prospectus Distributions.

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

AND

IN THE MATTER OF
INNOVA EXPLORATION LTD.

AND

BMO NESBITT BURNS INC., GMP SECURITIES L.P.
AND BLACKMONT CAPITAL INC.

ORDER
(Section 74)

Background

The Ontario Securities Commission (the Commission) has received an application (the Application) from BMO Nesbitt Burns Inc., GMP Securities L.P. and Blackmont Capital Inc. (the Underwriters) and Innova Exploration Ltd. (the Issuer) for an order pursuant to section 74 of the Securities Act (Ontario) (the Act) that section 53 of the Act does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) for securities to be issued pursuant to an over-allotment option, as defined below (the Requested Relief).

Interpretation

In this order,

"over-allotment option" means a right granted to the underwriters by an issuer or a selling security holder of the issuer in connection with the distribution of securities under a short form prospectus to acquire, for the purposes of covering the underwriters' over-allocation position, a security of an issuer that has the same designation and attributes as a security that is distributed under such short form prospectus, and that

(i) expires not later than the 60th day after the date of the closing of the distribution, and

(ii) is limited to the lesser of

A the over-allocation position determined as at the closing of the distribution, and

B 15% of the number or principal amount of the securities qualified for the distribution, without taking into account the securities issuable on the exercise of the over-allotment option; and

"over-allocation position" means the amount by which the aggregate number or principal amount of securities that are the subject of offers to purchase received by all underwriters of a distribution exceeds the aggregate number or principal amount of securities distributed by an issuer or selling securityholder under the prospectus, without taking into account the securities issuable on the exercise of an over-allotment option.

Representations

This order is based on the following facts represented by the Issuer and the Underwriters:

1. the purpose of an over-allotment option is to allow underwriters to conduct market stabilization activities in circumstances where the risk in so doing is protected by the existence of an over-allotment option;

2. over-allotment options are not designed to allow underwriters to sell additional securities after a prospectus has been filed or an underwriting agreement has been signed; and

3. underwriters would not accept the market risk in conducting market stabilization activities without having an over-allotment option.

Order

The Commission is satisfied that the test contained in the Act that provides the Commission with the jurisdiction to make the order has been met;

The decision of the Commission pursuant to section 74 of the Act is that the Requested Relief is granted provided that:

(a) the Issuer has entered into an enforceable agreement with the Underwriters, who have agreed to

purchase the securities offered under a short form prospectus, other than the securities issuable on the exercise of an over-allotment option,

(b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the Issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,

(c) the Issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,

(d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities,

(e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained, and

(f) the relief granted will cease to be effective on the date when NI 44-101 is amended to permit solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to over-allotment options.

Confidentiality

The further decision of the Commission under the Act is that the Application and this decision shall be held in confidence by the Commission until the occurrence of the earliest of the following:

(a) the date on which a news release is issued by the Issuer announcing that the Issuer has entered into an enforceable agreement with the Underwriters with respect to the purchase securities to be offered under a short form prospectus, and

(b) the date that is thirty days from the date of this decision.

Dated July 17, 2006

"John Hughes"
Manager, Corporate Finance

2.2.3 TSX Group Inc. and TSX Inc. - s. 144

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

AND

IN THE MATTER OF
TSX GROUP INC. AND TSX INC.

ORDER
(Section 144 of the Act)

WHEREAS the Commission issued an order dated April 3, 2000 granting and continuing the recognition of The Toronto Stock Exchange Inc. (TSE) as a stock exchange pursuant to section 21 of the Act;

AND WHEREAS the Commission issued an amended and restated order dated January 29, 2002 to reflect that the TSE retained Market Regulation Services Inc. (RS Inc.) to perform its market regulation functions;

AND WHEREAS the Commission issued an amended and restated order dated September 3, 2002 to reflect the name change of TSE to TSX Inc. (TSX) and a reorganization under which TSX became a wholly-owned subsidiary of TSX Group Inc. (TSX Group), a holding company, and granted TSX Group recognition as a stock exchange pursuant to section 21 of the Act, in each case effective on the closing of the reorganization;

AND WHEREAS the Commission issued an amended and restated order dated August 12, 2005 to reflect changes to the definition of an independent director (Amended and Restated Order);

AND WHEREAS the Commission issued an order dated December 16, 2005 to vary the financial viability and financial statement terms and conditions of the Amended and Restated Order to adjust the financial ratios to reflect the change in accounting policy of TSX Group and TSX for recognition of initial and additional listing fees, and to make other suitable revisions (together with the Amended and Restated Order, the Recognition Order);

AND WHEREAS TSX has applied for an order pursuant to section 144 of the Act to: (i) vary the financial viability terms and conditions of the Recognition Order to adjust the current ratio to reflect the balance sheet reclassification of a portion of TSX's deferred revenue-initial and additional listing fees as current liabilities and the portion of future tax asset related to the current portion of deferred revenue-initial and additional listing fees as current assets and to make suitable revisions to the definition of total assets and adjusted shareholders' equity in the financial leverage ratio; and (ii) to vary paragraph 13(d) of the Recognition Order to provide TSX the ability to seek the approval of the Commission to perform its regulation functions, not performed by RS Inc., through any other party, including its affiliates or associates;

AND WHEREAS the Commission has received certain representations from TSX in connection with TSX's application to vary the Recognition Order;

AND UPON the Commission being of the opinion that it is not prejudicial to the public interest to vary the Recognition Order;

IT IS ORDERED pursuant to section 144 of the Act that the Recognition Order be varied as follows:

1. Item 12 of Schedule A of the Recognition Order is repealed and replaced by the following:

12. FINANCIAL VIABILITY

(a) TSX shall maintain sufficient financial resources for the proper performance of its functions.

(b) TSX shall calculate monthly the following financial ratios:

(i) a current ratio, being the ratio of current assets (excluding the portion of future tax asset related to deferred revenue-initial and additional listing fees) to current liabilities (excluding deferred revenue-initial and additional listing fees),

(ii) a debt to cash flow ratio, being the ratio of total debt used to finance TSX's operations (including any line of credit drawdowns, term loans, debentures and capital lease obligations, but excluding liabilities such as accounts payable, deferred revenue, income taxes payable and employee benefit liabilities) to adjusted EBITDA for the most recent twelve months, where adjusted EBITDA is earnings before interest, taxes, depreciation and amortization, adjusted to include initial and additional listing fees received and to exclude initial and additional listing fees reported as revenue, and

(iii) a financial leverage ratio, being the ratio of adjusted total assets to adjusted shareholders' equity, where adjusted total assets is calculated as total assets on the TSX balance sheet less the portion of future tax asset reported on the TSX balance sheet that is related to deferred revenue-initial and additional listing fees as reported on the TSX balance sheet (Adjusted Future Tax Asset) and adjusted shareholders' equity is calculated as shareholders' equity as reported on the TSX balance sheet plus deferred revenue-initial and additional listing fees as reported on the TSX balance sheet less Adjusted Future Tax Asset,

in each case as calculated on a consolidated basis and consistently with the consolidated financial statements of TSX.

(c) TSX shall report quarterly (concurrently with the financial statements filed pursuant to paragraph 17) to Commission staff the monthly calculations of its current ratio, debt to cash flow ratio and financial leverage ratio for the previous quarter.

(d) If TSX fails to maintain or anticipates it will fail to maintain in the next twelve months:

(i) its current ratio at greater than or equal to 1.1/1,

(ii) its debt to cash flow ratio at less than or equal to 4.0/1, or

(iii) its financial leverage ratio at less than or equal to 4.0/1,

it shall immediately notify Commission staff.

(e) If TSX fails to maintain its current ratio, debt to cash flow ratio, or financial leverage ratio at the levels outlined in paragraph 12(d) above for a period of more than three months:

(i) its Chief Executive Officer will immediately deliver a letter advising Commission staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the situation, and

(ii) TSX will not, without the prior approval of the Director, make any capital expenditures in excess of its approved budget, or make any loans, bonuses, dividends or other distributions of assets to any director, officer, related company or shareholder until the deficiencies have been

eliminated for at least six months or a shorter period of time as agreed to by Commission staff.

(f) TSX shall not enter into any agreement or transaction either (i) outside the ordinary course of business or (ii) with TSX Group or any subsidiary or associate of TSX Group if it expects that, after giving effect to the agreement or transaction, TSX is likely to fail to maintain the current ratio, the debt to cash flow ratio or the financial leverage ratio at the levels outlined in paragraph 12(d) above.

2. Item 13(d) of Schedule A of the Recognition Order is repealed and replaced by the following:

13. REGULATION

(d) TSX shall continue to perform all other regulation functions not performed by RS Inc. TSX shall not perform such regulation functions through any other party, including its affiliates or associates, without prior Commission approval. For greater certainty, any outsourcing of a business function that is done in accordance with paragraph 23 does not contravene this paragraph.

Dated August 10, 2006

"Paul M. Moore"

"David L. Knight"

2.2.4 Ur-Energy Inc. et al. - s. 74

Headnote

Order that section 53 of the Act does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 Short Form Prospectus Distributions for securities to be issued pursuant to an over-allotment option, exercisable after the closing of the offering, granted by the issuer to the underwriters to purchase up to 15% of the securities offered under the offering.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 74, 53.
National Instrument 44-101 Short Form Prospectus Distributions.

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

AND

**IN THE MATTER OF
UR-ENERGY INC.**

AND

**GMP SECURITIES L.P.,
DUNDEE SECURITIES CORP. AND
RAYMOND JAMES LTD.**

**ORDER
(Section 74)**

Background

The Ontario Securities Commission (the Commission) has received an application (the Application) from Ur-Energy Inc. (the Issuer) and GMP Securities L.P., Dundee Securities Corp. and Raymond James Ltd. (the Underwriters) for an order pursuant to section 74 of the *Securities Act* (Ontario) (the Act) that section 53 of the Act does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus in accordance with National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) for securities to be issued pursuant to an over-allotment option, as defined below (the Requested Relief).

Interpretation

In this order,

"over-allotment option" means a right granted to the underwriters by an issuer or a selling security holder of the issuer in connection with the distribution of securities under a short form prospectus to acquire, for the purposes of covering the underwriters' over-allocation position, a security of an issuer that has the same designation and

attributes as a security that is distributed under such short form prospectus, and that

(i) expires not later than the 60th day after the date of the closing of the distribution, and

(ii) is limited to the lesser of

A the over-allocation position determined as at the closing of the distribution, and

B 15% of the number or principal amount of the securities qualified for the distribution, without taking into account the securities issuable on the exercise of the over-allotment option; and

"over-allocation position" means the amount by which the aggregate number or principal amount of securities that are the subject of offers to purchase received by all underwriters of a distribution exceeds the aggregate number or principal amount of securities distributed by an issuer or selling securityholder under the prospectus, without taking into account the securities issuable on the exercise of an over-allotment option.

Representations

This order is based on the following facts represented by the Issuer and the Underwriters:

1. the purpose of an over-allotment option is to allow underwriters to conduct market stabilization activities in circumstances where the risk in so doing is protected by the existence of an over-allotment option;

2. over-allotment options are not designed to allow underwriters to sell additional securities after a prospectus has been filed or an underwriting agreement has been signed; and

3. underwriters would not accept the market risk in conducting market stabilization activities without having an over-allotment option.

Order

The Commission is satisfied that the test contained in the Act that provides the Commission with the jurisdiction to make the order has been met;

The decision of the Commission pursuant to section 74 of the Act is that the Requested Relief is granted provided that:

(a) the Issuer has entered into an enforceable agreement with the Underwriters, who have agreed to purchase the securities offered under a short form prospectus, other than the securities issuable on the exercise of an over-allotment option,

(b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the Issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,

(c) the Issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,

(d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities,

(e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained, and

(f) the relief granted will cease to be effective on the date when NI 44-101 is amended to permit solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to over-allotment options.

Confidentiality

The further decision of the Commission under the Act is that the Application and this decision shall be held in confidence by the Commission until the occurrence of the earliest of the following:

(a) the date on which a news release is issued by the Issuer announcing that the Issuer has entered into an enforceable agreement with the Underwriters with respect to the purchase of securities to be offered under a short form prospectus, and

(b) the date that is thirty days from the date of this decision.

Dated July 28, 2006

"Cameron McInnis"
Manager, Corporate Finance

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Falconbridge Limited

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

AND

IN THE MATTER OF
FALCONBRIDGE LIMITED

Hearing:	June 27, 2006		
Order:	June 30, 2006		
Reasons:	August 17, 2006		
Panel:	Wendell S. Wigle, Q.C.	-	Chair of the Panel
	Suresh Thakrar	-	Commissioner
	David L. Knight, FCA	-	Commissioner
Counsel:	Kent Thomson William Ainley James Doris Kenneth Klassen	-	for Xstrata plc and Xstrata Canada Inc.
	R. Paul Steep Gary Girvan Dana Peebles Eric Block	-	for Falconbridge Limited
	Larry Lowenstein Laura Fric Don Gilchrist Sarah Millar	-	for Inco Limited
	Johanna Superina Naizam Kanji Shannon O'Hearn	-	for Staff of the Ontario Securities Commission

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THE APPLICATIONS

[1] The applications arose from a take-over bid contest for Falconbridge Limited (**Falconbridge**), between an offer by Inco Limited (**Inco**) supported by the Falconbridge Board of Directors (the **Falconbridge Board** or **Board**) and an unsolicited offer by Xstrata Canada Inc.

[2] On May 18, 2006, Xstrata plc and Xstrata Canada Inc. (together, **Xstrata**) applied to the Commission for an order under section 127 of the *Securities Act* (the **Act**) that trading cease immediately in respect of any securities issued, or to be issued, under or in connection with the shareholder rights plan adopted by the Falconbridge Board on March 21, 2006 (the **Replacement Rights Plan**) and that exemptions from the prospectus and registration requirements shall not apply to any trades in securities of Falconbridge pursuant to or in connection with that rights plan.

[3] On June 20, 2006, Falconbridge filed a cross-application for an order under section 127 of the Act prohibiting Xstrata from acquiring any Falconbridge common shares (the **Falconbridge Shares**) under the exemption in section 94(3) of the Act until the expiry of the Xstrata Offer, defined below.

[4] At the same time, Inco applied for intervenor standing. At the hearing of this matter, after considering the submissions and on consent of all parties, we granted Inco full standing with the proviso that we would not allow Inco to make repetitive contributions to the hearing in its affidavit evidence, cross-examinations, or submissions. Inco supported Falconbridge's cross-application.

HEARING AND DECISION

[5] We heard the applications on June 27, 2006, following which we reserved our decision.

[6] By Order issued June 30, 2006, with reasons to follow, we ordered that:

1. pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities issued, or to be issued, under or in connection with the Replacement Rights Plan shall cease on the earlier of:

   (a) the date Xstrata takes up sufficient Falconbridge shares to meet its majority of the minority condition,

   (b) July 28, 2006; and

2. pursuant to clause 3 of subsection 127(1) of the Act, the exemption created by subsection 94(3) to the restrictions on purchases during a take-over bid found in section 94(2) of the Act shall not apply to Xstrata until the earlier of the following dates:

   (a) the date Xstrata takes up sufficient Falconbridge shares to meet its majority of the minority condition,

   (b) July 28, 2006.

[7] The following are the reasons for our decision.

BACKGROUND

Falconbridge and Noranda

[8] Falconbridge as it exists today resulted from an amalgamation with its parent Noranda Inc. (**Noranda**) in June 2005. Brascan Corporation (**Brascan**) owned 41% of Noranda before that date. The impetus for the amalgamation was the announcement by Brascan to the management of Noranda and the old Falconbridge company in February 2004 of its intention to divest its holdings in Noranda.

[9] The Noranda board pursued the sale of Noranda in early 2004, but was not successful. On June 16, 2004, Noranda announced that it was conducting a review of various means of maximizing shareholder value. Over the summer of 2004, Noranda and its advisors negotiated with a number of parties – including Inco and Xstrata – respecting their interest in acquiring Noranda.

[10] Because negotiations in 2004 did not lead to any transactions, Noranda's management pursued other alternatives. On June 30, 2005, Noranda and the old Falconbridge company were amalgamated to form the new Falconbridge company, the target of the take-over bids in this hearing.

Xstrata Acquires Almost 20% of Falconbridge

[11] On August 15, 2005, Xstrata acquired Brascan's interest in Falconbridge, resulting in Xstrata initially holding a 19.9% stake in Falconbridge at a cost of $28 per share. Xstrata acquired additional Falconbridge Shares in three separate private transactions in an attempt to increase its holdings in Falconbridge above 20%. Following additional share issuances by Falconbridge, however, Xstrata's ownership level dropped to its current 19.8%.

[12] A condition of its deal with Brascan was Xstrata's obligation to top-up the purchase price paid to Brascan if, within nine months of the deal, Xstrata or any of its affiliates made an offer or announced the intention to acquire a majority or more of the Falconbridge Shares at a price per share in excess of C$28.

[13] On August 25, 2005, the Falconbridge Board heard a presentation from Xstrata, which included a discussion about, among other things, the possible combination of Xstrata and Falconbridge and a request by Xstrata for board representation. Discussions continued but broke down by mid-September.

Falconbridge and Inco Negotiations

[14] On September 9, 2005, the CEOs of Falconbridge and Inco met to determine whether Inco would be interested in pursuing a transaction involving Falconbridge. Inco and Falconbridge entered into a confidentiality and standstill agreement dated September 13, 2005 and began exchanging confidential information.

The First Rights Plan – September 2005

[15] On September 22, 2005, the Falconbridge Board adopted a shareholder rights plan (the **First Rights Plan**). The First Rights Plan would be triggered in the event that a party, acting alone or together with related parties, acquired or announced its intention to acquire more than 20% of the Falconbridge Shares unless the acquisition was made by way of a "permitted bid" or with the approval of the Falconbridge Board. A "permitted bid" had to (i) be a bid made for all Falconbridge Shares, (ii) be open for 60 days from the date of announcement and extended for 10 days after the bidder first took up shares under the bid, and (iii) have an irrevocable condition that a majority of the Falconbridge Shares, other than those held by the bidder, be tendered under the bid. If the Rights Plan were triggered, rights holders – other than the acquiring party(ies) – could purchase Falconbridge Shares at half the prevailing market price at the time the rights became exercisable.

The Inco Offer and the Support Agreement

[16] On October 7, 2005, Inco's CEO presented a proposed offer to the CEO and the President of Falconbridge. On October 10, 2005, Inco made a formal offer (the **Inco Offer**) under which Falconbridge shareholders could elect to receive a combination of cash and Inco stock, subject to proration, in exchange for their Falconbridge Shares. The Inco Offer was subject to several conditions, including (a) obtaining certain regulatory approvals, (b) an irrevocable condition that not less than 50.01% of Falconbridge Shares held by shareholders independent of Inco be tendered under the offer, (c) a waivable condition that at least 66 ?% of Falconbridge Shares be tendered under the offer, and (d) reaching agreement on the terms of a support agreement. The purpose of the minimum tender conditions was to allow Inco to undertake a second step transaction to acquire any Falconbridge Shares not tendered under the Inco Offer.

[17] Inco and Falconbridge executed a support agreement on October 10, 2005 (the **Support Agreement**) in connection with the Inco Offer. The Support Agreement protected and supported the Inco Offer through deal protection provisions, including: (a) covenants by Falconbridge not to solicit or facilitate offers to acquire Falconbridge, (b) a covenant that Falconbridge would not redeem rights or otherwise waive, amend, suspend or terminate its shareholders rights plan without Inco's prior written consent, (c) an agreement to allow Inco to match any competing offers, and (d) a requirement that Falconbridge pay Inco a U.S. $320 million break fee in certain circumstances, including in the event Falconbridge withdrew its recommendation of the Inco Offer. The Support Agreement also contained a standard "fiduciary out" clause, which allowed Falconbridge to terminate the Support Agreement in the event of: (a) a competing offer or proposal that the Falconbridge Board determined was a "superior proposal" for the purposes of the Support Agreement, and (b) upon expiry of Inco's right to match the competing offer. Termination fees were still payable by Falconbridge under the "fiduciary out " clause.

[18] The Inco Offer was extended three times: on December 8, 2005, expiring January 27, 2006; on January 12, 2006, expiring February 28, 2006; and on February 21, 2006, expiring June 30, 2006. The purpose of the extensions was to give Inco more time to obtain regulatory approvals, including approval by the European Union.

The Replacement Rights Plan – March 2006

[19] The First Rights Plan required shareholder approval within six months of its adoption – by March 22, 2006 – failing which the plan would terminate in accordance with its terms. Falconbridge did not seek shareholder approval of the First Rights Plan.

[20] On March 21, 2006, the Falconbridge Board executed the Replacement Rights Plan, which was substantially similar to the First Rights Plan. The stated purpose of the Replacement Rights Plan was:

> to prevent a creeping takeover of Falconbridge and ensure that any offer to acquire Falconbridge is made to all shareholders for all their Falconbridge Shares and that such an offer could not be completed unless shareholders holding at least 50% of the Falconbridge Shares [other than the offeror or related parties] are tendered in favour of the offer…The Plan is also designed to ensure that all Shareholders are treated fairly in any transaction involving a change in control of Falconbridge and have an equal opportunity to participate in the benefits of a take-over bid.

[21] A "permitted bid" under the Replacement Rights Plan would be an offer to all Falconbridge shareholders to acquire all of their Falconbridge Shares that would contain an irrevocable condition that a majority of Falconbridge Shares, other than those held by the bidder, be tendered under the bid (a "majority of the minority").

Inco Improves Its Offer

[22] On May 13, 2006, Inco advised Falconbridge that it was prepared to make an improved offer upon negotiation of satisfactory amendment to the Support Agreement, including an increase in the break fee to U.S. $450 million. The Falconbridge Board approved the amendment to the Support Agreement to recommend acceptance of the amended Inco Offer to its shareholders. Inco increased its Offer for the Falconbridge Shares.

The Xstrata Offer

[23] Xstrata's top-up obligation to Brascan, now known as Brookfield Asset Management Inc., expired on May 15, 2006.

[24] On May 18, 2006, Xstrata made a formal offer to acquire all the Falconbridge Shares that it did not own (the **Xstrata Offer**). The Xstrata Offer was an all-cash offer of C$52.50 per share for all Falconbridge Shares, expiring July 7, 2006. It was conditional upon, among other things: (a) obtaining certain regulatory approvals, (b) the Replacement Rights Plan not being effective at the time of take-up and payment, and (c) waivable minimum tender conditions: (i) 66 ?% of Falconbridge Shares and (ii) a majority of Falconbridge Shares held by shareholders independent of Xstrata. The purpose of the minimum tender conditions, as in the Inco Offer, was to facilitate a second step transaction to acquire any Falconbridge Shares not tendered under the Xstrata Offer.

[25] Although both the Inco Offer and the Xstrata Offer included a majority of the minority minimum tender condition, only the Inco Offer was a permitted bid under the Replacement Rights Plan because its condition was irrevocable. Xstrata could waive its condition.

[26] In its Directors' Circular issued May 31, 2006, the Falconbridge Board stated its conclusion that the Xstrata Offer was: highly conditional, with most conditions in Xstrata's discretion to determine; not a permitted bid and could be coercive; and not a "Superior Proposal" as defined in the Support Agreement. The Falconbridge Board determined not to make a recommendation to shareholders with respect to the Xstrata Offer, but continued to recommend that shareholders accept the Inco Offer.

The Falconbridge Proposal regarding the Applications

[27] On Sunday, June 25, 2006, Falconbridge served on Xstrata and Inco and filed with the Commission a letter stating conditions under which it would consent to the Replacement Rights Plan ceasing to apply to the Xstrata Offer (the **Falconbridge Proposal**):

> We are writing on behalf of Falconbridge to advise you that Falconbridge is prepared to have the [Replacement Rights Plan] cease to apply to Xstrata's take-up of Falconbridge Shares under the Xstrata Offer, in the following circumstances:
>
> 1. The earlier of the following dates have occurred:
>
> (a) the date Xstrata takes up sufficient Falconbridge shares to meet its majority of the minority condition; and
>
> (b) July 28, 2006.
>
> 2. Xstrata will have amended the Xstrata Offer to provide that in the event it takes up and pays for any Falconbridge shares under the Xstrata Offer, Xstrata will extend its offer for at least ten days on the same terms and conditions contained in the Xstrata Offer, in order to allow those Falconbridge shareholders who may not have tendered to the Xstrata Offer to do so.
>
> 3. Xstrata will not make use of the exemption set forth in Section 94(3) of the Act until the earlier of the following dates:
>
> (a) the date Xstrata takes up sufficient Falconbridge shares to meet its majority of the minority condition; and
>
> (b) the date the Inco offer expires.

[28] Inco responded that it was prepared to accept the terms of the Falconbridge Proposal and proceed on the basis of those terms. Xstrata rejected the Falconbridge Proposal.

Inco Announces a Combination with Phelps Dodge and Further Improves Its Offer

[29] On the evening of June 25, 2006, Phelps Dodge Corporation (**Phelps Dodge**), Inco and Falconbridge jointly announced that they had agreed to combine in a US$56 billion transaction. Under the terms of the transaction, Phelps Dodge would acquire all of the outstanding common shares of Inco for a combination of cash and common shares of Phelps Dodge. Each shareholder of Inco would receive 0.672 shares of Phelps Dodge stock plus C$17.50 per share in cash for each share of Inco.

[30] The day before the hearing, on June 26, 2006, Inco announced a further variation of its Offer and extended the expiry date to July 13, 2006. Simultaneous with its entry into the combination agreement with Phelps Dodge, Inco entered into an agreement with Falconbridge to increase its previously recommended offer for Falconbridge. Financing from Phelps Dodge allowed Inco to raise its offer price and keep the auction alive. Under the terms of this enhanced offer, Inco offered Falconbridge shareholders, at their election, C$53.83 in cash, or 0.82419 of an Inco common share plus C$0.05 in cash, for each Falconbridge share subject to pro ration. Assuming full pro ration, Falconbridge shareholders would receive C$17.50 in cash and 0.55676 of an Inco common share for each share of Falconbridge. The Falconbridge Board unanimously agreed to recommend this revised offer and approved an amendment of the Support Agreement with Inco to reflect the revised price.

THE ISSUES

[31] The applications raised two main issues: (A) whether it was time for the Replacement Rights Plan to be cease traded, and (B) whether Xstrata should be prohibited from making market acquisitions of up to 5% of Falconbridge Shares as otherwise permitted by section 94(3) of the Act during the course of the Xstrata Offer.

ISSUE A: The Replacement Rights Plan

Law

[32] The objectives of the take-over bid provisions of the Act are well-stated in National Policy 62-202:

> 2. The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are concerned that certain defensive measures taken by management of a target company may have the effect of denying to shareholders the ability to make such a decision and of frustrating an open take-over bid process.
>
> 5. The Canadian securities regulatory authorities consider that unrestricted auctions produce the most desirable results in take-over bids and they are reluctant to intervene in contested bids. However, they will take appropriate action if they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid or to a competing bid.
>
> 6. The Canadian securities regulatory authorities appreciate that defensive tactics, including those that may consist of some of the actions listed in subsection (4), may be taken by a board of directors of a target company in a genuine attempt to obtain a better bid. Tactics that are likely to deny or limit severely the ability of the shareholders to respond to a take-over bid or a competing bid may result in action by the Canadian securities regulatory authorities.

[33] In past matters dealing with shareholder rights plans, the Commission has balanced the public interest regarding the right of the shareholders of the target to tender their shares to the bidder of their choice against the duties of the target board to maximize shareholder value. In *Lac Minerals*, for example, the Commission said:

> The Commission will only make an order under section 127 of the Act when it is in the public interest to do so. In considering whether to make an order in this case, the real issue the Commission had to determine was whether, the extent to which, and when the Commission should interfere with the conduct of the Lac Board, professed to be directed at maximizing shareholder value, in the interests of allowing the shareholders of Lac to respond to one of the two outstanding take-over bids.
>
> *Re Lac Minerals Ltd.* (1994), 17 O.S.C.B. 4963 (***Lac Minerals***) at pages 4968-4969.

[34] While the Commission has been reluctant to intervene where the target board, acting reasonably, has expressed its confidence that it can increase shareholder value "within a limited period of time", it will intervene to the extent necessary to protect the interest of target shareholders. In *Royal Host*, the Ontario, British Columbia and Alberta securities commissions noted that the challenge was:

> in finding the appropriate balance between permitting the directors to fulfil their duty to maximize shareholder value in the manner they see fit and protecting the right of the shareholders to decide whether to tender their shares to the bid.
>
> *Re Royal Host Real Estate Investment Trust and Canadian Hotel Income Properties Real Estate Investment Trust* (1999), 22 O.S.C.B. 7819 (***Royal Host***)

[35] The commissions in *Royal Host* acknowledged that all shareholder rights plan proceedings are fact specific. Accordingly, there is no "holy grail" of a specific test or series of tests that can be applied to all circumstances where a commission is called upon to rule on a shareholder rights plan. The commissions in *Royal Host* "simply considered all the relevant factors rather than attempting to establish and apply a comprehensive and conclusive test". They said:

> While it would be impossible to set out a list of all of the factors that might be relevant in cases of this kind, they frequently include:

- whether shareholder approval of the rights plan was obtained;
- when the plan was adopted;
- whether there is broad shareholder support for the continued operation of the plan;
- the size and complexity of the target company;
- the other defensive tactics, if any, implemented by the target company;
- the number of potential, viable offerors;
- the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
- the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
- the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;
- the length of time since the bid was announced and made;
- the likelihood that the bid will not be extended if the rights plan is not terminated.

Royal Host at page 7828

Analysis

[36] Shareholder rights plans and support agreements are neither novel nor exotic. They are, however, unique to the circumstances of each transaction. Accordingly, the reasoning applied to determine one matter may be wholly or partially inappropriate in another.

[37] The unique circumstances of this case are worth summarizing here:

(a) the unsolicited bidder – Xstrata – is the target company – Falconbridge's – largest shareholder, holding 19.8% of the Falconbridge Shares, and relations between the target and its largest shareholder are strained;

(b) the Falconbridge Board was concerned that Xstrata could potentially buy only enough shares to attain a blocking position via permitted market purchases (i.e, it could "creep" into a blocking position) or a partial bid, thereby deterring other potential offerors for the Falconbridge Shares;

(c) the current competing offer by Inco had an irrevocable minimum tender condition, and was supported by a support agreement between Inco and Falconbridge;

(d) Xstrata was under an obligation to pay Brascan a "top-up" on the purchase price in the event that Xstrata made an offer for a majority or more of Falconbridge Shares at a higher price before May 15, 2006;

(e) the Falconbridge Board did not seek shareholder approval of either the First or the Replacement Rights Plan (together or in general, the **Rights Plan**s) because of its fear that they could not obtain shareholder approval, and the adoption of overlapping Rights Plans;

(f) the restrictions on Falconbridge Board and its commitment to the Inco Offer under the Support Agreement;

(g) the dispersed and changing nature of the Falconbridge shareholders;

(h) the fact that Falconbridge is a global player competing in the metals and commodities markets worldwide, and that the sale of Falconbridge attracted international interest and offers;

(i) the complex domestic and foreign regulatory environment; and

(j) the extended period that Falconbridge, in one form or another, has been "in play".

[38] The *Royal Host* approach provides a useful framework for reviewing and evaluating the relevant factors of this case.

- *when the plan was adopted*

- *whether shareholder approval of the rights plan was obtained*

- *whether there is broad shareholder support for the continued operation of the plan*

[39] The First Rights Plan and Replacement Rights Plan were clearly tactical in nature. The First Rights Plan was adopted only one month after Xstrata purchased Brascan's shares in Falconbridge in August 2005. Xstrata's purchase instantly made it Falconbridge's largest single shareholder. There should have been no doubt that Falconbridge was "in play" – it was apparent there would be a sale of equity and/or voting control.

[40] During discussions for Board representation for Xstrata in August and September 2005, Falconbridge expressed concerns about Xstrata's intentions and ability to creep. Falconbridge invited Xstrata to make an offer for Falconbridge Shares on terms similar to those of the permitted bids under the Rights Plans, including a condition that no shares will be taken up unless a majority of shares not owned by Xstrata were tendered (waivable only with consent of Falconbridge). Xstrata declined to make such an offer, assuring the Falconbridge Board that shareholders were protected by anti-creep provisions of securities laws.

[41] The negotiations broke down in mid-September 2005; however, by then Falconbridge had begun new discussions with Inco. We note that both Falconbridge and Inco submitted affidavit evidence that Falconbridge did not consult Inco at the time it adopted the First Rights Plan. We heard no evidence to the contrary.

[42] In its press release dated September 22, 2005, Falconbridge stated the First Rights Plan was adopted to address the possibility of a "creeping take-over", to allow the Falconbridge Board to prevent an attempt to acquire control of Falconbridge other than by means of an offer made to all shareholders.

[43] We do not make a finding about the legality of the Rights Plans under corporate law or whether the Board has failed in its fiduciary duty under corporate law to act in the best interests of the shareholders by failing to put the Rights Plans to a shareholder vote. However, we can consider whether shareholder approval was obtained for the purpose of determining whether the Rights Plans were in the public interest – the shareholders' interest in tendering their shares to the bid of their choice.

[44] Neither Rights Plan was put to the Falconbridge shareholders for their approval. Section 5.18 of each Rights Plan required ratification by a majority of Falconbridge shareholders within six months of the Rights Plan being executed.

[45] Falconbridge submitted that, because of the dispersed nature of shareholdings in Falconbridge, the Falconbridge Board determined there was a real risk that Xstrata could have used its 19.8% ownership at a meeting of the shareholders to defeat the Rights Plans even if these were otherwise in the best interest of the remaining Falconbridge shareholders. One day before the First Rights Plan was to due to expire the Board adopted the Replacement Rights Plan.

[46] Shareholder approval alone is not determinative, but it can be seen as a component of any broad-based shareholder support for the continuation of the Plan. In Cara, the Commission stated:

> If a plan does not have shareholder approval, it generally will be suspect as not being in the best interest of the shareholders; however, shareholder approval by itself will not establish that a plan is in the best interest of the shareholders.
>
> *Re: Cara Operations Ltd.* (2002), 25 O.S.C.B. 7997(***Cara***) at 8003.

[47] The evidence we heard was insufficient to allow us to determine whether there was broad shareholder support for the continued operation of the Replacement Rights Plan. We know Xstrata's position. We also have form letters of support for each party from minor shareholders, but we agree with the submissions of Staff and Xstrata that little weight should be accorded to these letters. The absence of shareholder approval in this case makes it difficult to determine the level of shareholder support in such a widely held company.

- *the length of time since the bid was announced and made*

[48] The Xstrata Offer was open for 50 days. Although this is longer than the statutory minimum of 35 days, the absolute number of days a bid has been outstanding is not a determinative factor. Again, the Commission said in *Cara*:

> While absolute numbers of days, on their own, should not be the deciding factor in determining whether a rights plan no longer serves the interest of shareholders, the longer the period the higher the onus is on those alleging the rights plan still serves the interest of shareholders.
>
> *Cara*, at 8003..

[49] Falconbridge submitted that the Replacement Rights Plan should remain in place until Falconbridge shareholders could consider the Inco Offer and the Xstrata Offer on their own merits. We agree with this submission insofar as it promotes the secondary objective stated in National Policy 62-202, providing a framework within which take-over bids may proceed in an open and even-handed environment. However, we do not agree with the submission if it implies a requirement for the "equalization of timing" between friendly and unsolicited bids as a basis for keeping a rights plan in place.

- *the size and complexity of the target company*

[50] A target that is not large or complex in nature may be easily and quickly assessed by potential bidders. In this case, even if the structure of Falconbridge were relatively straightforward, Falconbridge operates in a complex domestic and foreign regulatory environment. Such complexity could lengthen the time a target company's board would require to create or sustain an auction.

- *the other defensive tactics, if any, implemented by the target company*

[51] We considered the effect of unusual terms of the Support Agreement. The Support Agreement constrained the ability of the Falconbridge Board to solicit and facilitate or effectively take any action affecting Inco's bid without Inco's consent. Inco's consent was required before the Falconbridge Board could waive the Replacement Rights Plan for competing bids. That term of the Support Agreement could discourage competing bids and severely limit the ability of the shareholders to benefit from a competing bid. We consider it to have been a further defensive factor, although we note that a bid that met the provisions for a "permitted bid" in the Support Agreement would be allowed to proceed.

- *the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders*

- *the likelihood that, if given further time, the target company will be able to find a better bid or transaction*

- *the number of potential, viable offerors*

[52] If given further time, Falconbridge would likely not be able to find a better bid or transaction because its management's hands were tied by the Support Agreement. No evidence was presented that Falconbridge was taking steps to find a superior offer or transaction that would be better for its shareholders. Indeed, Falconbridge was constrained by the Support Agreement from soliciting or facilitating competing offers. Only unsolicited offers that were determined to be "superior offers" stood a chance of being put to the shareholders.

[53] That does not mean that further unsolicited bids or better bids by the current offerors were unlikely. The Xstrata offer itself was made in the face of the Replacement Rights Plan and the Support Agreement. Inco enhanced its bid twice, once in anticipation of the Xstrata Offer, and most recently through the involvement of a new player, Phelps Dodge.

[54] This case differs markedly from the situation in *Chapters*. There, the offeror and the target were the two major players in Canadian retail book industry. The Commission found that the likely absence of synergies with companies outside the Canadian book industry would result in few potential, viable offers. There are no such inherent limitations in this case. Falconbridge and its competitors operate internationally. The involvement of a major, global industry player like Phelps Dodge, two days before the hearing of this matter, indicated that there might have been other potential, viable offerors out there for Falconbridge at the time of the hearing. The fact that the market price of Falconbridge Shares was higher than both the Xstrata and Inco Offers suggested that the market continued to believe the auction was not over.

- *the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company*

[55] Falconbridge submitted that the Xstrata Offer was coercive because Xstrata's majority of minority tender condition was not irrevocable. Xstrata could acquire only enough Falconbridge Shares through its bid or its subsection 94(3) purchases to block the Inco Offer and thereby end the auction.

[56] Xstrata submitted that its offer was not coercive for several reasons:

(a) the Xstrata Offer was an all-cash offer to all the Falconbridge shareholders for all their Falconbridge Shares;

(b) the reservation of a right to waive the minimum tender condition was consistent with virtually every unsolicited take-over bid in Canada since 1999;

(c) unsolicited bids are exposed to risks of unexpected facts, actions, or events that may arise as a result of efforts by a target company to resist an unsolicited offer;

(d) the Act does not prevent a bidder from reserving its right to waive minimum tender conditions. Moreover the Act does not prohibit partial bids; and

(e) neither the Commission nor any other securities commission in Canada has ever required, as a condition of setting aside or terminating a rights plan, that a bidder include in its offer an irrevocable tender condition.

[57] The Commission has found that a bid can be coercive if the bidder does not provide any assurance that it will bid for the remaining shares or acquire them in a second step transaction. In *Regal*, the Commission concluded that the target company shareholders might have been inclined to tender to the hostile bid "out of fear of being left as minority shareholders in a company controlled by MDC, having little liquidity for their shares". In Ivanhoe, the Commission also found evidence of a "fear factor" where the hostile bid was a partial bid for an entity with relatively illiquid shares.

Re: MDC Corporation and Regal Greetings and Gifts Inc. (1994), 17 O.S.C.B. 4971 (***Regal***) at 4981

Re: Ivanhoe III Inc. and Cambridge Shopping Centres Limited (1999), 22 O.S.C.B. 1327 (***Ivanhoe***) at 1329.

[58] We agree with Xstrata's submissions that the risk of a "fear factor" in this case is not the same as there may have been in the *Regal* or *Ivanhoe* matters. In both *Regal* and *Ivanhoe*, the targets' shares were held by a small number of institutional shareholders – sixteen and six, respectively. In *Ivanhoe*, the unsolicited bidder already owned 43% of the shares and was making a partial bid for another 25%. It is not difficult to consider the bids in those cases coercive.

[59] In the matter before us, given Xstrata's current shareholdings, these was some risk that Xstrata would be able to entrench itself by acquiring any tendered shares and either (a) extending its offer with a significant blocking position that would make it practically impossible for the Inco Offer to succeed or (b) abandoning its offer. Xstrata's ability to waive its majority of minority tender condition in the unique circumstances of this case could have a detrimental impact on the auction process, regardless of whether the Xstrata Offer is or is not coercive in the manner of *Ivanhoe* or *Regal*. We will consider Xstrata's ability to entrench itself by making permitted market purchases during its bid under section 94(3) of the Act in our discussion of Issue B, below.

[60] Could Xstrata achieve a blocking position if the Replacement Rights Plan were cease-traded? We considered the affidavit and *viva voce* cross-examination evidence of the financial advisors to Xstrata and Falconbridge: William Quinn, Managing Director and Head of Mergers and Acquisitions of TD Securities Inc. and Paul Spafford, Managing Director and Vice-Chairman of CIBC World Markets Inc., respectively. Mr. Quinn and Mr. Spafford reached opposing conclusions on the Xstrata's ability to block Inco's bid. Their evidence was based more on Xstrata's purchases under subsection 94(3) of the Act rather than the hypothetical scenario of Xstrata taking up less than a "majority of minority" of shares.

[61] Nevertheless, after reviewing the evidence of Mr. Quinn and Mr. Spafford, and hearing the submissions of counsel, we find that there was insufficient evidence to determine the minimum number of shares that Xstrata would have to take up before it achieved a *de facto* blocking position in the context of present market conditions.

[62] However, it was not necessary for us to make such a finding. We did make the finding that, in the unique circumstances of this case, there was a significant risk that any substantial take up by Xstrata following a waiver of its minimum condition would likely end the auction early and end the opportunity of the majority of the Falconbridge shareholders to tender their shares to any bidder. Such a result is, in our opinion, contrary to the public interest.

- *the likelihood that the bid will not be extended if the rights plan is not terminated*

[63] Xstrata submitted that it "**will not proceed with its all cash, fully financed Offer to the shareholders of Falconbridge unless the [Replacement] Rights Plan is cease traded or terminated**." [emphasis in the original]. However, we heard little probative evidence that Xstrata would not extend its offer if the Replacement Rights Plan was maintained to some fixed date.

Conclusion

[64] Upon reviewing all of the factors as a whole and in light of the evidence and the unique circumstances of this case, we concluded that it would be in the public interest for the Replacement Rights Plan to continue to operate for a brief period. Doing so would reduce the risk to the Falconbridge Shareholders that the current auction might be ended prematurely.

[65] After considering the submissions of Xstrata, Falconbridge, Inco, and Staff we concluded that the outside date of July 28, 2006 found in the Falconbridge Proposal provided a reasonable period of time to allow the Replacement Rights Plan to continue before a cease-trade order came into effect. Should Xstrata have taken up sufficient Falconbridge shares to meet its majority of the minority condition before July 28, 2006, the cease-trade order would immediately take effect. On that date, Xstrata would have substantively fulfilled the requirement for a permitted bid under the Replacement Rights Plan. The risk that Falconbridge Shareholders could lose the opportunity to tender their shares to the bid of their choice in an open auction would have been eliminated.

[66] Counsel for Inco suggested that our Order explicitly permit Falconbridge to return to the Commission prior to July 28 for a variation of our Order if it could establish continuing utility of the Replacement Rights Plan at that time to maximize value to Falconbridge shareholders. In our view such a term was inappropriate and unnecessary. It was inappropriate because it would drag out the uncertainty and risk to the interests of the Falconbridge Shareholders. It was unnecessary because any interested party may apply for revocation or variation of our Order under section 144 of the Act. In circumstances of this case the application would likely be heard on expedited basis.

ISSUE B: The 5% Exemption

Application and Issues

[67] In its Cross-Application, Falconbridge requested that an order be issued under s.127(1)(2.1) or 127(1)(3) of the Act, prohibiting Xstrata from acquiring Falconbridge Shares under subsection 94(3) of the Act while its bid remains outstanding, because Xstrata's exercise of the subsection 94(3) exemption, even if lawful, would contravene the policy objectives of the take-over bid regime in the Act – and breach the principles in *Re: H.E.R.O. Industries Ltd. et al.* (1990), 13 O.S.C.B. 3777 (***HERO***) – rather than provide the benefit to shareholders which the exemption was meant to provide.

[68] Falconbridge's Cross-Application raised two broad issues. First, had Xstrata complied with the Act and brought itself within the narrow scope of the exemption under subsection 94(3)? Second, even if we had assumed that Xstrata had complied with the Act, in the unusual circumstances of this case was it in the public interest for us to order under subsections 127(3) that the exemption did not apply to Xstrata?

Law and Policy

[69] We will begin with the second issue first.

[70] Subsection 94(2) of the Act prohibits an offeror from acquiring target company shares during a take-over bid. This subsection reinforces the fundamental principle of securities legislation that all shareholders of a target company receive equal treatment. However, subsection 94(3) provides a limited exemption to the 94(2) prohibition (the **5% Exemption**).

[71] The 5% Exemption allows a bidder to purchase up to 5% of the target's outstanding shares provided that:

(a) the bidder states its intent to make such purchases in the take-over bid circular;

(b) the purchases are made through the facilities of a recognized stock exchange; and

(c) the bidder issues and files a press release at the end of each day on which it makes such purchases.

[72] Ontario Securities Commission Rule 62-501 *Prohibited Stock Market Purchases of the Offeree's Securities by the Offeror During a Take-Over Bid* (OSC Rule 62-501) varies the conditions under which a bidder can make market purchases under the 5% Exemption to ensure that such purchases apply only to normal course, unsolicited stock exchange trades, and not to trades privately arranged and subsequently "crossed" on a stock exchange.

[73] From a policy perspective, the purchases under the 5% Exemption contribute to liquidity in the target company's shares, provide all target shareholders with an equal opportunity to sell their target shares prior to conclusion of the bid, raise the market price of the shares, and encourage bidders to raise their offer prices.

Analysis

[74] The policy considerations of the 5% Exemption were not particularly compelling in this case. We heard evidence that: over four million shares of Falconbridge changed hands every day; the market price of Falconbridge shares had been rising and exceeded both the Inco and Xstrata offer prices; and Inco had already raised its offer price.

[75] If we assumed that Xstrata was in technical compliance with subsection 94(3), could this Panel nonetheless order that the 5% Exemption should not apply to Xstrata? Falconbridge submitted that there is ample authority to make such an order. In

HERO the Commission concluded that a transaction which was technically compliant with the Act, but in violation of its purpose and spirit, should be cease-traded in order to protect the integrity of capital markets, and in particular investors who were solicited in the course of a bid. Xstrata vigorously sought to distinguish *HERO* from the case before us. Xstrata also submitted that the Commission has repeatedly emphasized the need proceed with extreme caution in cases where a breach of securities law has not been shown.

[76] While the facts of *HERO* differ from this case, it is a settled principle that the Commission may make an order under section 127 of the Act even where no violation of securities law has been shown if it is in the public interest to make such an order. We agree with Xstrata's submission that in such cases the Commission must proceed with caution in making an order. However, for the reasons set out in our analysis of the Replacement Rights Plan issue, above, we concluded that, in the unique circumstances of this case, it was in the public interest to make such an order under subsection 127(3) of the Act. We placed the same restrictions on this order as we placed on the cease-trade order respecting the Replacement Rights Plan.

[77] The above analysis assumes that Xstrata complied fully with the requirements of subsection 94(3) of the Act. We were concerned that Xstrata may have failed to comply with the Act, particularly with paragraph 94(3)(a), "the offeror states its intent to make such purchases in the take-over bid circular". The evidence was that Xstrata stated the opposite: that it had no present intention to make market purchase, but retained the right to do so in the future. Xstrata argued that the language used in its Circular has been used for decades by every unsolicited offeror in Ontario. Staff did not object to the language. Falconbridge submitted that the wording of the intention must be interpreted in the particular facts of the case; in this case, the wording was inappropriate because the ambiguity could be potentially decisive to the auction. Inco submitted that Xstrata's intention was diametrically opposed to the requirements of the statute. Inco submitted the reason the language used by Xstrata was commonplace was that market purchases under the 5% Exemption are *de minimis* in most cases and are not potentially decisive to an auction as they were in this case.

[78] It was not necessary for us to rule on the adequacy of the wording used by Xstrata, because we based our decision on the availability of subsection 94(3) to Xstrata on the second issue. Nevertheless, the Commission should review, as a matter of policy, what is appropriate wording in an take-over bid circular in circumstances where an offeror might wish to use the subsection 94(3) exemption.

Conclusion

[79] Our analysis of this issue was conducted in light of the unique circumstances of this case. Market purchases made by Xstrata during its Offer, in combination with Xstrata's ability to waive its minimum tender condition, would have had the potential to end the take-over bid auction early. The majority of Falconbridge Shareholders would thereby have been deprived of their right to respond to the then current and future take-over bids. We therefore concluded that it was in the public interest to order, pursuant to subsection 127(3), that the 5% Exemption would not apply to Xstrata until the date Xstrata took up sufficient Falconbridge shares to meet its majority of the minority condition or July 28, 2006 – whichever date was earlier.

Dated at Toronto, this 17th day of August, 2006

"Wendell S. Wigle"

"Suresh Thakrar"

"David L. Knight"

3.1.2 Pente Investment Management Ltd. - s. 26(3) of the Securities Act

IN THE MATTER OF
THE REGISTRATION OF
PENTE INVESTMENT MANAGEMENT LTD.

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
SECTION 26(3) OF THE SECURITIES ACT

Date: August 16, 2006

Director: David M. Gilkes
Manager, Registrant Regulation
Capital Markets Branch

Submissions:

Isabelita Chichioco	-	For the staff of the Commission
Robin J.V. Fielding	-	For Pente Investment Management Ltd.

Background

1. Pente Investment Management Ltd. (**PIM**) has been registered in Ontario in the categories of Limited Market Dealer, and Investment Counsel and Portfolio Manager since March 1990.

2. On June 30, 2006 the Ontario Securities Commission (**OSC**) received PIM's audited financial statements for the year end March 31, 2006. The financial statements revealed that as of March 31, 2006 PIM had a capital deficiency of $3,500. Based on unaudited financial statements as at June 30, 2006, the capital deficiency had been rectified.

3. On July 17, 2006 staff of the OSC wrote PIM indicating that it had recommended that standard terms and conditions be imposed on PIM's registration for a period of six months.

4. On July 25, 2006 PIM requested an Opportunity to be Heard (**OTBH**) by the Director pursuant to subsection 26(3) of the *Securities Act* that states:

   (3) Refusal – The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard.

5. The OTBH was conducted through written submissions.

Submissions

6. OSC staff focus on three criteria in determining whether an applicant is suitable for registration: proficiency, integrity and financial solvency.

7. Financial statements are the principal tool used by the OSC to monitor a registrant's financial viability and its capital position.

8. Regulation 1015 made under the Act requires:

   Every adviser shall maintain a minimum free capital of the maximum amount, if any, that is deductible under any clause of the bonding or insurance policy required under section 108 plus $5,000 of working capital calculated in accordance with generally accepted accounting principles or such greater amount as the Director considers necessary where the adviser exercises control over clients' funds or securities.

9. Mr. Fielding, President of PIM explained that the capital deficiency was the result of declaring a retroactive bonus paid to Mr. Fielding to reduce taxable income. The amount of bonus led to the capital deficiency. The deficiency was recognized by PIM after the financial statements had been prepared. The capital position had been rectified by the time the financial statements were filed with the Commission on June 30, 2006.

Decision

10. All registrants are required to meet the capital requirements of the Act. Maintaining minimum free capital is a serious regulatory obligation placed on registrants. This requirement helps to protect investors from insolvency fostering confidence in Ontario's capital markets. The dollar amount of free capital needed is not a prohibitive expense.

11. When this obligation is not met, OSC staff has regularly recommended that terms and conditions to monitor the financial situation of the firm be imposed on its registration. Only in rare circumstances would this course of action not be followed. PIM's tax planning is not a persuasive reason not to impose monitoring terms and conditions.

12. Therefore, the terms and conditions as set out in Schedule A are imposed on the registration of PIM. PIM must continue to meet all requirements under the Act that apply to it as a registrant.

August 16, 2006

David M. Gilkes
Manager, Registrant Regulation
Capital Markets Branch

Schedule A

Terms and Conditions on the Registration of
Pente Investment Management Ltd.

1. Pente Investment Management Ltd. shall file on a monthly basis, for a period of six months effective with the month ending August 31, 2006, the following information:

   a. year-to-date unaudited financial statements, which includes a balance sheet and income statement prepared in accordance with generally accepted accounting principles;

   b. month end calculation of excess free capital.

   This information shall be filed no later than three weeks after each month end with the Compliance section of the Ontario Securities Commission, attention Financial Analyst.

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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
Canadian Manoir Industries Limited	10 Aug 06	22 Aug 06	22 Aug 06	
Cogient Corp.	10 Aug 06	22 Aug 06	22 Aug 06	
Goldnev Resources Inc.	08 Aug 06	18 Aug 06		18 Aug 06
WorkGroup Designs Ltd.	09 Aug 06	21 Aug 06	21 Aug 06	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Hollinger Canadian Newspapers, Limited Partnership	21 May 04	01 Jun 04	01 Jun 04	23 Aug 06	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Cognos Incorporated	01 Jun 06	14 Jun 06	14 Jun 06		
DataMirror Corporation	02 May 06	15 May 06	12 May 06		
Fareport Capital Inc.	13 Sept 05	26 Sept 05	26 Sept 05		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
HMZ Metals Inc.	03 Apr 06	14 Apr 06	17 Apr 06		
Hollinger Canadian Newspapers, Limited Partnership	21 May 04	01 Jun 04	01 Jun 04	23 Aug 06	
Hollinger Inc.	18 May 04	01 Jun 04	01 Jun 04		
Mindready Solutions Inc.	06 Apr 06	19 Apr 06	19 Apr 06		
Neotel International Inc.	02 Jun 06	15 Jun 06	15 Jun 06		
Novelis Inc.	18 Nov 05	01 Dec 05	01 Dec 05		
TECSYS Inc.	02 Aug 06	15 Aug 06	15 Aug 06		

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Chapter 6

Request for Comments

6.1.1 Proposed MI 61-101 *Protection of Minority Security Holders in Special Transactions* and Related Companion Policy 61-101CP *Protection of Minority Security Holders in Special Transactions*

NOTICE AND REQUEST FOR COMMENTS

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

Introduction

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

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

We are publishing the Instrument and Companion Policy for a 90-day comment period. The Instrument will be implemented as a regulation in Québec and as a rule in Ontario.

We are also proposing to withdraw the following notices upon the coming into force of the Instrument as they will no longer be relevant:

- Ontario Securities Commission Staff Notice 61-701 - *Applications for Exemptive Relief under Rule 61-501*
- Notice of the Autorité des marchés financiers - *Protection of Securityholders in the Course of Certain Transactions - Situation in Québec and Ontario – Exemptive Relief*

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

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

Background

The Instrument will achieve three objectives. First, when the OSC amended Rule 61-501 in 2004, the AMF had indicated its intention to harmonize its Regulation Q-27 by making similar amendments. The Instrument and the related repeal of Rule 61-501 and Regulation Q-27 will achieve this objective by providing a single harmonized instrument governing the subject transactions in both Québec and Ontario.

Second, the Instrument provides an opportunity to make minor enhancements to the existing provisions of Rule 61-501 that are incorporated in the Instrument.

In the context of the CSA initiative to harmonize and streamline securities law in Canada, the Minister of Finance of Québec has introduced before the National Assembly Bill 29, *An Act to amend the Securities Act and Other Legislative Provisions.* The OSC has proposed similar amendments to its Minister for consideration. In publishing proposed National Instrument 62-104 *Take-Over Bids and Issuer Bids* (Proposed NI 62-104) for comment on April 28, 2006, it was recognized that harmonized amendments were needed. Once amended, the *Securities Act* (Québec) (QSA) and the *Securities Act* (Ontario) (OSA), together with the Proposed NI 62-104, will create a harmonized take-over bid and issuer bid regime. As a result, the Instrument

achieves a third objective by addressing a number of consequential amendments that would otherwise be required to be made to Regulation Q-27 and Rule 61-501 to reflect this new legislative environment.

The effective date of the Instrument will depend on the adoption and coming into force of the harmonizing amendments to the QSA and OSA described above and on the adoption and coming into force of the Proposed NI 62-104.

To facilitate transition from the existing rules to the Instrument, we determined that Rule 61-501 would serve as the base document to which changes could be made to create the Instrument and achieve our stated goal of harmonizing Regulation Q-27 and Rule 61-501. As a consequence, we have adopted the approach of describing the Instrument in terms of a series of changes made to the current Rule 61-501. A number of the proposed changes are consequential changes as a result of the Proposed NI 62-104 and are not intended to affect the substance of Rule 61-501. Changes other than these consequential changes are described under "Summary of Key Features of the Instrument" and in footnotes to the draft of the Instrument that has been compared with Rule 61-501 and its Companion Policy and blacklined to show the differences. This blacklined version of the Instrument is available on the websites of the AMF and the OSC and published in the OSC Bulletin as a schedule to this notice.

Purpose and Benefits

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

Summary of Key Features of the Instrument

Part 1 Definitions and Interpretation

Part 1 of the Instrument identifies defined terms used in the Instrument. As noted above, many of the changes to this section, as compared with Rule 61-501, are a consequence of the Proposed NI 62-104 or of proposed amendments to the QSA or OSA (the QSA together with the OSA being referred to as the “Acts”), as many of the definitions in Rule 61-501 cross-reference definitions in the Acts. The following are the most significant amendments to the definitions.

The expression “beneficially owns” now includes the substantive provision to address deemed indirect ownership. The definitions of collateral benefit and downstream transactions have been added for completeness. The ownership thresholds in all these definitions should be calculated equally.

The term “bid” replaces the term “formal bid”. As the term “bid” is restricted to a take-over bid or an issuer bid made by way of a circular. This is not a substantive change.

The term “control person” replaces the term “control block holder”. It is proposed that the Acts will be amended to include equivalent definitions of “control person”. We anticipate removing the definition in the final version of the Instrument once the proposed amendments to the Acts are in force to avoid duplication.

The definition of “disclosure document” has been changed to take into consideration the technical circumstance where no information circular or other document is required in connection with a business combination and a material change report is the only disclosure document required.

The definition of “person” has been updated to harmonize the definitions. The definition of “entity” has been retained despite the addition of the definition of “person” to assist with the readability of certain sections.

The definition of “income trust” has been updated to reflect the definition in section 1.2 of National Policy 41-201 Income Trusts and Other Indirect Offerings.

The definition of “issuer insider” was amended to reflect the new definition of “insider” proposed for the Acts.

In order preserve the status quo, we have amended the definition of “related party” to include an exception for a “bona fide lender” as the equivalent exception was removed from the definition of “control person” in order to conform the definition of “control person” to the definition proposed for the Acts.

We have amended the definition of “related party transaction” to include the provision of services to the issuer by a related party or by the issuer to a related party. These new categories of related party transactions would not be subject to a formal valuation requirement, as contemplated by section 5.4(1), but would require minority approval unless an exemption was otherwise available.

We have removed the requirement to obtain a statement from the published market that it concurs with an opinion obtained for the purpose of demonstrating that there is a liquid market for a class of securities. The additional statement or opinion of the published market was no longer regarded as being necessary to ensure compliance.

Part 2 Disclosure

Specific additional disclosure for an insider bid is presently included as an item in Form 32 to the OSA (the current form of take-over bid circular in Ontario) but is not proposed to be an item in the form of take-over bid circular required under Proposed NI 62-104. We have therefore expanded the disclosure required under the Instrument to maintain the overall current level of required disclosure.

We have deleted the reference to National Instrument 62-102 *Disclosure of Outstanding Share Data* from section 2.4(2)(b) of the Instrument as National Instrument 62-102 has been repealed.

Part 3 Issuer Bid

We have deleted the current disclosure requirement in section 3.2(a) as the same disclosure for an issuer bid is now proposed as Item 27 of Form 62-104F2 (issuer bid circular form).

Part 4 Business Combinations

To preserve the standard used in Regulation Q-27, the *de minimis* exemption set out at section 4.1(c) is calculated with reference to beneficial owners instead of registered owners.

We have moved the exemption entitled, “Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority”, Part 5 of Rule 61-501 to Part 4 of the Instrument as this exemption more appropriately applies in the context of a business combination than in the context of a related party transaction.

Part 5 Related Party Transactions

Transactions yet to be carried out under the terms of agreements entered into before May 1, 2000 in Ontario and before December 15, 2000 in Québec will now be subject to the requirements of this Part.

Part 7 Independent Directors

The proposed Instrument will prohibit an independent director from receiving a benefit that is not generally available to security holders as a consequence of a transaction even if the intention to provide the benefit was not formed until after the transaction closed. A director who accepts such a benefit will not be considered independent for the purpose of the Instrument.

Companion Policy

We have not made any significant changes to the Companion Policy.

Local Repeals

Regulation Q-27 and Rule 61-501 will be repealed upon the coming into force of this Instrument. Both jurisdictions will need to implement the Instrument, including a repeal of either Regulation Q-27 or Rule 61-501, as applicable, using a local implementing rule. Each jurisdiction will separately publish its respective implementing rule.

Alternatives Considered

No other alternatives were considered.

Authority for the Proposed Instrument in Québec

Paragraph 331.1(24) of the QSA authorizes the AMF to make regulations to prescribe measures to protect minority shareholders with respect to the transactions determined by the AMF that are carried out by issuers or other persons having access to the financial market and that are likely to give rise to situations of conflict of interest.

Authority for the Proposed Instrument in Ontario

Paragraph 143(1)28 of the OSA authorizes the OSC to make rules to regulate issuer bids, insider bids, going private transactions and related party transactions, including, in clause v, prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders.

Anticipated Costs and Benefits

Primarily, the Instrument consolidates and harmonizes the existing requirements of Québec and Ontario governing insider bids, issuer bids, business combinations and related party transactions in a single multilateral instrument. In our view, the Instrument will generally reduce compliance costs for market participants as two overlapping regulations with be replaced by a single instrument. While a new category of related party transactions will incrementally increase compliance costs for certain transactions, the benefit of the additional regulation is consistent with the policy objectives of the Instrument and justified in relation to the cost of compliance.

Unpublished Materials

No unpublished study, report, or other written materials were relied on in proposing the Instrument, Companion Policy or the repeal of Rule 61-501 and Regulation Q-27.

Request for Comment

We request your comments on the Instrument. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. *Service Agreements with a Related Party.* We have modified the definition of "related party transaction" to establish additional categories of related party transactions. We believe that issuers that retain the services of a related party for valuable consideration or provide services to a related party should obtain the approval of minority security holders unless an exemption is otherwise available. Should a formal valuation also be required? Would a formal valuation be feasible? If so, why? If not, why not?

2. *Prohibition Against Independent Directors Receiving Special Benefits.* The Instrument includes a new prohibition against independent directors receiving a benefit that is not generally available to security holders as a consequence of a transaction. This prohibition is intended to prohibit, for example, the payment of "success fees" to independent directors in the context of the completion of a transaction. In order to safeguard the independent director review process, the prohibition still applies even if the intention to provide the benefit was not formed until after the transaction has been completed. Do you agree with the stated policy objective? Do you believe that the prohibition will interfere with otherwise legitimate practices? If so, please provide examples.

How to Provide Your Comments

Please provide your comments by November 23, 2006 by addressing your submission to the *Autorité des marchés financiers* and the Ontario Securities Commission

Deliver your comments only to the address that follows. Your comments will be forwarded to OSC staff.

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec
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If you are not able to send your comments by e-mail, please send a diskette containing your comments in Word.

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

Questions

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August 25, 2006

SCHEDULE 1

ELECTRONIC BLACKLINE COMPARISON TO OSC RULE 61-501

~~ONTARIO SECURITIES COMMISSION RULE 61-501~~
~~INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS AND RELATED PARTY~~
MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

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~~ONTARIO SECURITIES COMMISSION RULE 61-501~~
~~INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS~~
MULTILATERAL INSTRUMENT 61-101
~~AND RELATED PARTY~~ PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

PART 1 INTERPRETATION

1.1 Definitions and Interpretations ~~- In –~~ For the purpose of this ~~Rule~~Instrument

"affected security" means

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

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

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

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

"associated entity", where used to indicate a relationship with ~~an entity~~a person, has the meaning ascribed to the term "associate" in subsection 1(1) of ~~the Act and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all the outstanding voting securities of the person;~~National Instrument 62-104 *Take-Over Bids and Issuer Bids*

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

(a) ~~despite subsections 1(5) and 1(6) of the Act, a person or company is not deemed to beneficially own securities that are~~securities beneficially owned by its ~~affiliated entity, unless the affiliated entity is also its~~ subsidiary entity, and[1]

(b) for the purposes of the definitions of collateral benefit, control ~~block holder~~person, downstream transaction[2] and related party, section ~~90~~1.6 of ~~the Act~~NI 62-104 applies in determining beneficial ownership of securities;

"bid" means a take-over bid or an issuer bid to which Part 2 of NI 62-104 applies[3];

"bona fide lender" means a person ~~or company~~ that

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

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

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

"business combination" means, for an issuer, an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder

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Note: This Instrument is based on OSC Rule 61-501 and, as a consequence, the footnotes set out herein are stated with reference to the current text of OSC Rule 61-501.

1 Since the *Securities Act* (Quebec) ("QSA") does not have the equivalent to subsections 1(5) and 1(6) of the *Securities Act* (Ontario) ("OSA") (OSA together with the QSA, the "Acts"), the definition now includes the substantive provision to address deemed indirect ownership.

2 The definitions of collateral benefit and downstream transactions have been added for completeness. The ownership thresholds in all these definitions should be calculated in the same manner.

3 The term "formal bid" has been replaced by the term "bid". The term "bid" is restricted to a take-over bid or an issuer bid made by way of a a circular.

of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include

(a) an acquisition of an equity security of the issuer under a statutory right of compulsory acquisition or, if the issuer is not a corporation, under provisions substantially equivalent to those comprising section ~~188~~206 of the ~~OBCA~~CBCA,

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

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

(d) a downstream transaction for the issuer, or

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

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

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

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

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

(B) a collateral benefit, or

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

"CBCA" means the Canada Business Corporation Act, R.S.C. 1985, c. C-44[4];

"class" includes a series of a class;

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

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

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

[4] The reference to the OBCA has been replaced by a reference to the CBCA to reflect the multi-jurisdictional status of this Instrument.

business of the issuer who hold positions of a similar nature to the position held by the related party, or

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

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

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

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

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

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

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

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

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

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

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

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

~~other than transactions related solely to services as an employee, director or consultant;~~

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

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

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

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

and includes, for an individual consultant a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner;[5]

[5] MI 45-105 has been repealed. The definition has been updated to track the equivalent definition in section 2.22 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

~~"consultant" has the meaning ascribed to that term in section 1.1 of Multilateral Instrument 45-105 - *Trades to Employees, Senior Officers, Directors, and Consultants*;~~
"control person"[6] means

(a) a person that holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer; or

~~"control block holder" of an entity means a person or company, other than a bona fide lender, that, whether alone or with joint actors, beneficially owns or exercises control or direction over securities of the entity sufficient to affect materially the control of the entity, and in the absence of evidence to the contrary, beneficial ownership or control or direction over voting securities to which are attached more than 20 per cent of the votes attached to all the outstanding voting securities of the entity is considered sufficient to affect materially the control of the entity;~~

(a) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, that holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

"controlled": for the purposes only of the definition of "subsidiary entity", an entity is considered to be controlled by a person ~~or company~~ if

(a) in the case of an entity that has directors, ~~(i)~~ the person directly or ~~company~~indirectly beneficially owns or exercises control or direction over voting securities of the entity ~~carrying more than 50 per cent of the votes for the election of directors, and(ii) the votes carried by the securities entitle the holder~~ which, if exercised, would entitle the person to elect a majority of the directors of the entity, unless the person beneficially owns or exercises control or direction over voting securities only to secure an obligation, [7]

(b) in the case of a partnership or other entity that does not have directors, other than a limited partnership, the person ~~or company~~ beneficially owns or exercises control or direction over more than 50 per cent of the voting interests in the partnership or other entity, or

(c) in the case of an entity that is a limited partnership, the person ~~or company~~ is the general partner or controls the general partner within the meaning of paragraph (a) or (b);

"convertible" means convertible into, exchangeable for, or carrying the right or obligation to purchase or otherwise acquire or cause the purchase or acquisition of, another security;[8]

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

"disclosure document" means

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

(b) for an issuer bid, an issuer bid circular sent to holders of offeree ~~securities,(c) for a business combination, an information circular sent to holders of affected securities, or, if no information circular is required, another document sent to holders of affected~~ securities, and

(~~d~~c) for a business combination[9] or a related party transaction,

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6 The term "control person" replaces the term "control block holder". Amendments to the Acts have been proposed that include equivalent definitions of "control person". We anticipate removing the definition in the final version of the Instrument if the amendments to the Acts are approved .

7 The definition has been conformed to the definition of "controlled entities" in section 1.3 of NI 62-104 and section 1.3 of NI 45-106.

8 The definition has been conformed to the definition of "convertible securities" included in section 1.5 of NI 62-104.

9 In circumstances where no information circular or other document is required for a business combination, a material change report would be the only disclosure document.

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

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

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

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

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

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

"entity" means a person ~~or company~~[10];

"equity security" has the meaning ascribed to that term in ~~subsection 89(1)~~section 1.1 of ~~the Act~~NI 62-104;

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

~~"formal bid" has the meaning ascribed to that term in subsection 89(1) of the Act;~~

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

"freely tradeable" means, for securities, that

(a) the securities are transferable,

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

(c) the securities do not form part of the holdings of any ~~person or company or combination of persons or companies referred to in paragraph (c) of the definition of "distribution" in the Act~~control person [11],

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

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

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

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

"income trust" means a trust or other ~~entity~~person that issues securities that entitle the security holders to net cash flows generated by ~~another entity;~~

(a) an underlying business owned by the trust or another person, or

(b) the income-producing properties owned by the trust or other person;[12]

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[10] The definition of "entity" has been retained despite the addition of the definition of "person" to assist with the readability of certain sections.

[11] The definition of control person is equivalent to paragraph (c) of the definition of "distribution" under the OSA and paragraph 9° of the definition of "distribution" under the QSA.

[12] The definition of "income trust" has been update to reflect the definition in section 1.2 of National Policy 41-201.

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

"independent director" means, for an issuer in respect of a transaction or bid[13], a director who is independent as determined in section 7.1;

"independent valuator" means, for a transaction or bid[14], a valuator that is independent of all interested parties in the transaction, as determined in section 6.1;

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

(a) an issuer insider of the offeree issuer,

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

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

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

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

"interested party" means

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

(b) for an issuer bid

(i) the issuer, and

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

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

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

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

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

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

(B) a collateral benefit, or

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

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

[13] Drafting change for clarity.
[14] Drafting change for clarity.

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

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

(A) a collateral benefit, or

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

"issuer bid", has the meaning ascribed to that term in section 1.1 of NI 62-104;

"issuer insider"[15] means, for an issuer

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

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

(c) a person that has

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

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

~~(c)~~ ~~a person or company that beneficially owns or exercises control or direction over voting~~ securities of the issuer carrying more than 10 ~~per cent~~% of the voting rights attached to all the issuer's outstanding voting securities ~~of the issuer~~;

"joint actors", when used to describe the relationship among two or more entities, means persons ~~or companies~~ "acting jointly or in concert" as defined in section ~~91~~1.7 of ~~the Act,~~NI 62-104, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making ~~a formal~~ bid, or with a person ~~or company~~ involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;

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

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

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

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

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections ~~183~~5.1 (1), (2) and (4~~3~~) of ~~the Regulation,~~NI 62-104,

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

[15] The definition of "issuer insider" was amended to reflect the new definition of "insider" proposed for the Acts.

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

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections ~~183~~5.1 (1), (2) and (4~~3~~) of ~~the Regulation,~~NI 62-104, and

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

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

"OBCA" means the *Business Corporations Act*, R.S.O., 1990, c. B.16;

"offeree issuer" has the meaning ascribed to that term in section 1.1 of NI 62-104;

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

"offeror" has the meaning ascribed to that term in ~~subsection 89(1) of the Act~~section 1.1 of NI 62-104;

"officer", for an issuer that is a limited partnership, includes an officer of the general partner of the issuer;

"person"[16] includes

(a) an individual,

(b) a corporation,

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

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

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

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

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

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

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

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

(ii) any director or ~~senior~~[17] officer of an interested party, except a ~~senior~~ officer of the issuer in the case of an issuer bid,

[16] Updated to harmonize the definitions.

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

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

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

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

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

"published market": has the meaning ascribed to that term in section 1.1 of NI 62-104;

"related party" of an entity means a person ~~or company~~, other than a bona fide lender[18], that, at the relevant time and after reasonable inquiry, is known by the entity or a director or ~~senior~~ officer of the entity to be

(a) a control ~~block holder~~person of the entity,

(b) a person ~~or company~~ of which a person ~~or company~~ referred to in paragraph (a) is a control ~~block holder~~person,

(c) a person ~~or company~~ of which the entity is a control ~~block holder~~person,

(d) ~~a person or company, other than a bona fide lender, that beneficially owns or exercises~~ a person that has

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

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

securities of the entity carrying more than 10 ~~per cent~~% of the voting rights attached to all the entity's outstanding voting securities ~~of the entity.~~;

(e) a director or ~~senior~~ officer of

(i) the entity, or

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

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

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[17] Amendments to the Acts have been proposed to replace the term "senior executive" in Quebec and "senior officer" in Ontario with the term "officer".

[18] The reference to "bona fide lender" was removed from the definition of "control person" as it is now included in the definition of "related party".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) retains services of the related party for valuable consideration;

~~"senior officer", for an issuer that is a limited partnership, includes a senior officer of the general partner of the issuer;~~

(o) provides services to the related party[19];

"subsidiary entity"~~: a person or company is considered to be a subsidiary entity of~~ means a person that is controlled directly or indirectly by another person ~~or company if~~and includes a subsidiary of that subsidiary

~~(a) it is controlled by~~

~~(i) that other,~~

[19] Paragraphs (n) and (o) establish additional categories of related party transactions. These new categories of related party transactions would not be subject to a formal valuation requirement as contemplated in subsection 5.4 (1) but would require minority approval unless an exemption is otherwise available.

(ii) that other and one or more persons or companies, each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other, or

(b) it is a subsidiary entity of a person or company that is that other's subsidiary entity"take-over bid" has the meaning ascribed to that term in section 1.1 of NI 62-104; and

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

1.2 Liquid Market

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the opinion is included in the disclosure document for the transaction, together with a statement that the published market on which the class is principally traded has sent a letter to the Director indicating concurrence with the opinion or providing a similar opinion, and[20]

[20] We have removed the requirement to obtain a statement from the published market that it concurs with an opinion obtained for the purpose of demonstrating that there is a liquid market for a class of securities. The additional statement or opinion of the published market was no longer regarded as being necessary to ensure compliance.

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

~~(3)~~(2) For the purpose of determining whether an issuer satisfies the market value requirement of subparagraph (1)(a)(~~iiii~~), the market value of a class of securities for a calendar month is calculated by multiplying

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

(b) ~~if~~

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

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

~~(3) An issuer that relies on an opinion referred to in subparagraph (1)(b)(ii) shall cause the letter referred to in subparagraph (1)(b)(iii) to be sent promptly to the Director.~~

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

1.4 Transactions by Underlying Operating Entity of Income Trust ~~- In~~ For the purpose of this ~~Rule~~Instrument, a transaction of an underlying operating entity of an income trust is deemed to be a transaction of the income trust, and a related party of the underlying operating entity is deemed to be a related party of the income trust.

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

~~**1.6 Application to Act, Regulation and Other Rules** - For the purposes of the Act, the Regulation and the rules, "going private transaction" has the meaning ascribed to the term "business combination" in section 1.1 of this Rule, and "insider bid" and "related party transaction" have the meanings ascribed to those terms in section 1.1 of this Rule.~~

1.6[21] **Referencing Instruments** – In this Instrument, a reference to

(a) a national instrument, after its first citation, may be made by citing the number of the instrument preceded by "NI", and

(b) a form in a national instrument, after its first citation, may be made by citing the number of the form preceded by "Form".

PART 2 INSIDER BIDS

2.1 Application

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

(2) ~~(1)~~ This Part does not apply to ~~an insider bid that is exempt from sections 95 to 100 of the Act under~~

[21] Prior section 1.6 is no longer required.

~~(a) subsection 93(1) of the Act; or~~

~~(b) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.(2) This Part does not apply to a take-over~~a bid that is an insider bid solely because of the application of section ~~90~~1.6 of the ~~Act~~ NI 62-104 to an agreement between the offeror and a security holder of the offeree issuer that offeree securities beneficially owned by the security holder, or over which the security holder exercises control or direction, will be tendered to the bid, if

(a) the security holder is not a joint actor with the offeror~~;~~, and

(b) the general nature and material terms of the agreement to tender are disclosed in a news release and report filed under ~~section 101~~Part 6 of the ~~Act,~~NI 62-104, or are otherwise generally disclosed.

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

2.2 Disclosure

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

(a) the background to the insider bid~~;~~,

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

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

(d) the disclosure required by Form 62-104F2 *Issuer Bid Circular* of NI 62-104 to the extent applicable and with necessary modifications.[22]

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

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

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

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

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

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

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

[22] This disclosure is presently included in Form 32 (current form of take-over bid circular in Ontario) but is not anticipated to be an item in the take-over bid circular form required under NI 62-104.

2.3 Formal Valuation

(1) Subject to section 2.4, the offeror in an insider bid shall

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

(b) provide the disclosure required by section ~~6.2;~~6.2,

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

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

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

(a) determine who the valuator will be~~;~~,

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

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

2.4 Exemptions from Formal Valuation Requirement

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

~~1.~~(a) **Discretionary Exemption** - ~~The~~the offeror has been granted an exemption from section 2.3 under section ~~9.1.~~9.1,

~~2.~~(b) **Lack of Knowledge and Representation** - ~~Neither~~neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed~~.~~,

~~3.~~(c) **Previous Arm's Length Negotiations** ~~- If~~ all of the following conditions are satisfied:

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

(~~i~~A) the making of the insider bid,

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

(~~iii~~C) a combination of transactions referred to in clauses (~~i~~A) and (~~ii~~B),

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

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

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

than 80 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2),

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

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

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

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

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

(~~i~~A) had not been generally disclosed, and

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

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

(~~i~~A) had not been generally disclosed, and

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

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

4.(d) **Auction** - ~~If~~ all of the following conditions are satisfied:

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

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

(~~ii~~B) one or more proposed transactions are outstanding that

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

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

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

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

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

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

(2) For the purposes of subparagraph ~~3~~(~~b~~c)(ii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the agreement referred to in clause ~~3~~(a~~c~~)(i)(A) or (~~ii~~B) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time~~;~~, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, ~~or under section 2.1 of National Instrument 62-102 - *Disclosure of Outstanding Share Data* [23]~~or section 5.4 of National Instrument 51-102 - ~~–~~*Continuous Disclosure Obligations*, immediately preceding the date of the agreement referred to in clause ~~3~~(a~~c~~)(i)(A) or (~~ii~~B) of subsection (1).

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

(a) is calculated at the time of the last of the agreements referred to in subparagraph ~~3~~(a~~c~~)(i) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time~~;~~, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, ~~or under section 2.1 of National Instrument 62-102~~ or section 5.4 of ~~National Instrument~~NI 51-102, immediately preceding the date of the last of the agreements referred to in subparagraph ~~3~~(a~~c~~)(i) of subsection (1).

PART 3 ISSUER BIDS

3.1 Application

(1) This Part ~~does not apply~~applies to ~~an issuer~~a bid that is ~~exempt from sections 95 to 100 of Part XX of the Act under~~an issuer bid.

~~(a) subsection 93(3) of the Act; or~~

~~(b) a decision made by the Commission under clause 104(2)(c) of the Act, unless the decision provides otherwise.~~

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

[23] National Instrument 62-102 has been repealed.

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

[24](a) ~~the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable;(b)~~ a description of the background to the issuer bid~~;~~,

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

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

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

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

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

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

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

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

3.3 Formal Valuation

(1) Subject to section 3.4, an issuer that makes an issuer bid shall

(a) obtain a formal valuation~~;~~,

(b) provide the disclosure required by section ~~6.2;~~6.2,

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

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

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

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

(a) determine who the valuator will be~~;~~, and

(b) supervise the preparation of the formal valuation.

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

~~1.~~ (a)**Discretionary Exemption** - ~~The~~the issuer has been granted an exemption from section 3.3 under section ~~9.1.~~9.1,

~~2.~~ (b)**Bid for Non-Convertible Securities** - ~~The~~the issuer bid is for securities that are not equity securities and that are not, directly or indirectly, convertible into equity securities~~.~~, or

~~3.~~ (c)**Liquid Market** - ~~The~~the issuer bid is made for securities for which

[24] This disclosure requirement is now proposed as Item 27 of Form 62-104F2 (issuer bid circular form).

(a~~i~~) a liquid market exists,

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

(~~c~~iii) if an opinion referred to in ~~subparagraph (b)(ii~~paragraph (() of subsection 1.2((1) is provided, the person ~~or company~~ providing the opinion reaches the conclusion described in subparagraph ~~3~~(~~b~~c)(ii) of this section 3.4 and so states in its opinion.

PART 4 BUSINESS COMBINATIONS

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

(a) the issuer is not a reporting issuer~~;~~,

(b) the issuer is a mutual fund~~;~~, or

(c) (i) at the time the business combination is agreed to, ~~(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold~~securities held by beneficial owners in a local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and[25]

~~(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer, and~~

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities ~~whose last address as shown on the books of the issuer is in Ontario~~[26] in the local jurisdiction.

4.2 Meeting and Information Circular

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

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

(3) The issuer shall include in the information circular

(a) the disclosure required by Form ~~33 of the Regulation,~~62-104F2, to the extent applicable and with necessary modifications~~;~~,[27]

~~(b) the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;~~(c) a description of the background to the business combination~~;~~,

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

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

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

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

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[25] Application of test to beneficial holders preserved from Quebec Regulation Q-27.
[26] See note 25.
[27] See note 24.

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

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

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

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

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

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

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

4.3 Formal Valuation

(1) Subject to section 4.4, an issuer shall obtain a formal valuation for a business combination if

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

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

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

(a) provide the disclosure required by section ~~6.2;~~6.2,

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

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

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

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

(a) determine who the valuator will be~~;~~, and

(b) supervise the preparation of the formal valuation.

4.4 Exemptions from Formal Valuation Requirement

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

~~1.~~ (a) **Discretionary Exemption -** ~~The~~the issuer has been granted an exemption from section 4.3 under section ~~9.1.~~9.1,

~~2.~~ (b) **Issuer Not Listed on Specified Markets -** ~~No~~no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States~~.~~,

~~3.~~ (c) **Previous Arm's Length Negotiations** ~~- If~~ – all of the following conditions are satisfied:

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

(~~i~~A) the business combination,

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

(~~iii~~C) a combination of transactions referred to in clauses (~~i~~A) and (~~ii~~B),

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

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

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

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

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

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

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

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

(~~i~~A) had not been generally disclosed, and

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

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

(iA) had not been generally disclosed, and

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

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

4. (d) **Auction** - If all of the following conditions are satisfied:

(ai) the business combination is publicly announced while

(iA) one or more proposed transactions are outstanding that

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

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

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

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

5. (e) **Second Step Business Combination** - If all of the following conditions are satisfied:

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

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

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

(div) the disclosure document for the formal bid

(iA) disclosed that if the offeror acquired securities under the formal bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in subparagraphs (bii) and (ciii),

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

(A~~I~~) were reasonably foreseeable to the offeror, and

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

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

~~6.~~ (f) **Non-redeemable Investment Fund** - ~~The~~the issuer is a non-redeemable investment fund that

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

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

(g) **Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority**[28]

The transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if

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

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

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

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

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

(2) For the purposes of subparagraph ~~3~~(~~b~~c)(ii) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the agreement referred to in clause ~~3~~(~~a~~c)(i)(A) or (~~ii~~B) of subsection (1), if the person ~~or company~~ proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time~~;~~, or

(b) if ~~subparagraph~~paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, ~~or under section 2.1 of National Instrument 62-102 - *Disclosure of Outstanding Share Data*~~ or section 5.4 of ~~National Instrument 51-102 -~~

[28] The exemption previously provided in Section 5.5(a) of OSC Rule 61-501 applies more appropriately in the context of a business combination than a related party transaction. The exemption will be removed from the exemptions applicable to related party transactions.

~~*Continuous Disclosure Obligations*~~NI, immediately preceding the date of the agreement referred to in clause ~~3~~(a~~c~~)(i)(A) or (~~ii~~B) of subsection (1).

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

(a) is calculated at the time of the last of the agreements referred to in subparagraph ~~3~~(a~~c~~)(i) of subsection (1), if the person~~ or company~~ proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time~~; ~~,or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report,~~ or under section 2.1 of National Instrument 62-102~~ or section 5.4 of ~~National Instrument~~NI 51-102, immediately preceding the date of the last of the agreements referred to in subparagraph ~~3~~(a~~c~~)(i) of subsection (1).

4.5 Minority Approval - Subject to section 4.6, an issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6 Exemptions from Minority Approval Requirement

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

~~1.~~(a) **Discretionary Exemption** - The issuer has been granted an exemption from section 4.5 under section 9.1.

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

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

(b~~ii~~) if an appraisal remedy referred to in subparagraph (a~~i~~) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in ~~subsection 185(4)~~section 190 of the ~~OBCA~~CBCA and that is described in the disclosure document for the business combination.

(c) **Other Transactions Exempt from Formal Valuation** – The circumstances described in paragraph (g) of subsection 4.4 (1)[29].

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

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

(a) the transaction is not a business combination~~;~~,

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

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

[29] See note 28.

PART 5 RELATED PARTY TRANSACTIONS

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

(a) the issuer is not a reporting issuer~~;~~,

(b) the issuer is a mutual fund~~;~~ ,

(c) (i) at the time the transaction is agreed to, ~~(A) persons or companies whose last address as shown on the books of the issuer is in Ontario hold~~securities held by beneficial owners in a local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

~~(B) the issuer reasonably believes that persons or companies who are in Ontario beneficially own less than two per cent of the outstanding securities of each class of affected securities of the issuer, and~~

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities ~~whose last address as shown on the books of the issuer is in Ontario;~~ in the local jurisdiction,

(d) the parties to the transaction consist solely of

(i) ~~an entity~~a person and one or more of its wholly-owned subsidiary entities, or

(ii) wholly-owned subsidiary entities of the same ~~entity;~~person,

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

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

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

(h) the issuer is obligated to and does carry out the transaction substantially under the terms [30] ,

(i) that were agreed to, and generally disclosed, before ~~May 1, 2000,(ii) that were agreed to, and generally disclosed, before~~ the issuer became a reporting issuer, or

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

(i) the transaction is a distribution

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

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

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

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

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

[30] Transactions yet to be implemented pursuant to agreements entered into before May 1, 2000 in Ontario and December 15, 2000 in Québec will now be subject to the requirements of this Part.

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

5.2 Material Change Report

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

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

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

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

(d) a description of

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

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

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

(f) subject to subsection (3), a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction~~;~~,

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

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

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

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

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

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

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

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

5.3 Meeting and Information Circular

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

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

(3) The issuer shall include in the information circular

(a) the disclosure required by Form ~~33 of the Regulation~~62-104F2 , to the extent applicable and with necessary modifications~~;~~,[31]

(b) ~~the disclosure required by Item 16, "Right of Appraisal and Acquisition", of Form 32 of the Regulation, to the extent applicable, together with a description of rights that may be available to security holders opposed to the transaction;~~(c) a description of the background to the transaction~~;~~,

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

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

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

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

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

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

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

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

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

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

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

5.4 Formal Valuation

(1) Subject to section 5.5, an issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

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[31] See note 24

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

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

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

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

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

(a) determine who the valuator will be~~;~~, and

(b) supervise the preparation of the formal valuation.

5.5 Exemptions from Formal Valuation Requirement - Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

~~1.~~ (a) **Discretionary Exemption** - ~~The~~the issuer has been granted an exemption from section 5.4 under section ~~9.1.~~9.1,

~~2.~~ (b) **Fair Market Value Not More Than 25% of Market Capitalization** - ~~At~~at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves interested parties, exceeds 25 per cent of the issuer's market capitalization, and for this purpose

(~~a~~i) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds the threshold for this exemption shall be made by the issuer's board of directors acting in good faith,

(~~b~~ii) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons ~~or companies~~ other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the transaction shall be deemed to be the consideration received by those persons ~~or companies~~,

(~~c~~iii) if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemption in this paragraph ~~2.~~(b), require formal valuations under this ~~Rule~~Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for this exemption are met, and

(~~d~~iv) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets (the "future transaction"), the calculation of the fair market value for the initial transaction shall include the fair market value, as of the time the initial transaction is agreed to, of the maximum number of securities or other consideration that the issuer may be required to issue or pay in the future transaction~~.~~,

~~3.~~ (c) **Issuer Not Listed on Specified Markets** - ~~No~~no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States~~.~~,

~~4.~~ (d) **Distribution of Securities for Cash** - ~~The~~the transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(~~a~~i) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(~~b~~ii) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party~~.~~,

~~5.~~ (e) **Certain Transactions in the Ordinary Course of Business** - ~~The~~the transaction is

(~~a~~i) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal or movable[32] property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

(~~b~~ii) a lease of real or immovable property[33] or personal or movable property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to the issuer than if the lease was with a person ~~or company~~ dealing at arm's length with the issuer and the existence of which has been generally disclosed~~.~~,

~~6.~~ (f) **Transaction Supported by Arm's Length Control Block Holder** - ~~The~~the interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control ~~block holder~~person of the issuer and who, in the circumstances of the transaction

(~~a~~i) is not also an interested party,

(~~b~~ii) is at arm's length to the interested party, and

(~~c~~iii) supports the transaction~~.~~,

~~7.~~ **(g)** Bankruptcy, Insolvency, Court Order **-** ~~I~~if

(~~a~~i) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(~~i~~A) bankruptcy or insolvency law, or

(~~ii~~Bi) section 191 of the ~~*Canada Business Corporations Act*~~CBCA, any successor to that section, or equivalent legislation of a jurisdiction,

(~~b~~ii) the court is advised of the requirements of this ~~Rule~~Instrument regarding formal valuations for related party transactions, and of the provisions of this paragraph 7, and

(~~c~~iii) the court does not require compliance with section ~~5.4.~~5.4., or

~~8.~~ **(h)** Financial Hardship **-** ~~I~~if(~~a~~i) the issuer is insolvent or in serious financial difficulty,

(~~b~~ii) the transaction is designed to improve the financial position of the issuer,

(~~c~~iii) paragraph ~~7~~ (g) is not applicable,

(~~d~~iv) the issuer has one or more independent directors in respect of the transaction, and

(~~e~~v) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(~~i~~A) subparagraphs (~~a~~i) and (~~b~~ii) apply, and

(~~ii~~B) the terms of the transaction are reasonable in the circumstances of the issuer.

~~9. Amalgamation or Equivalent Transaction with No Adverse Effect on Issuer or Minority - The transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if~~

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

[32] The addition reflects civil law in Quebec.
[33] The addition reflects civil law in Quebec.

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

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

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

~~(e) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.~~[34]

(i) **Asset Resale** –

~~10.~~ ~~Asset Resale - The~~(i) the subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

(~~a~~A) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

(~~b~~B) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction, and

(ii) the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section ~~6.2.~~ 6.2,

~~11.~~ (j) **Non-redeemable Investment Fund** - ~~The~~the issuer is a non-redeemable investment fund that

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

(~~b~~ii) at the time of publicly announcing the related party transaction, publicly disseminates the net asset value of its securities as of the business day before the announcement.

5.6 Minority Approval - Subject to section 5.7, an issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement

(1) Subject to subsections (2), (3), (4) and (5), section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

~~1.~~ (a) **Discretionary Exemption** - ~~The~~ the issuer has been granted an exemption from section 5.6 under section ~~9.1.~~9.1,

~~2.~~ (b) **Fair Market Value Not More Than 25 Per Cent of Market Capitalization** - ~~The~~the circumstances described in paragraph ~~2~~ (b) of section ~~5.5.~~5.5,

~~3.~~ (c) **Fair Market Value Not More Than $2,500,000 – Distribution of Securities for Cash** - ~~The~~the circumstances described in paragraph ~~4~~ (d) of section 5.5, if

[34] See note 28.

~~(a)~~ (i) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States,

~~(b)~~ (ii) at the time the transaction is agreed to, neither the fair market value of the securities to be distributed in the transaction nor the consideration to be received for those securities, insofar as the transaction involves interested parties, exceeds $2,500,000,

~~(c)~~ (iii) the issuer has one or more independent directors in respect of the transaction who are not employees of the issuer, and

~~(d)~~ (iv) at least two-thirds of the directors described in subparagraph (~~c~~iii) approve the transaction~~.~~,

~~4.~~ (d) **Other Transactions Exempt from Formal Valuation** - ~~The~~the circumstances described in paragraphs ~~5, 6~~(e) and ~~9~~(f) of section ~~5.5.~~ 5.5,

~~5.~~ (e) **Bankruptcy, Insolvency, Court Order** - ~~The~~the circumstances described in subparagraph ~~7~~(~~a~~g)(i) of section 5.5, if the court is advised of the requirements of this ~~Rule~~Instrument regarding minority approval for related party transactions, and of the provisions of this paragraph ~~5.~~, and the court does not require compliance with section ~~5.6.~~5.6,

~~6.~~ (f) **Financial Hardship** - ~~The~~the circumstances described in paragraph ~~8~~(h) of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities~~.~~,

~~7.~~ (g) **Loan to Issuer, No Equity or Voting Component** ~~- The~~ –

(i) the transaction is a loan, or the creation of a credit facility, that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person ~~or company~~ dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

(~~a~~A) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

(~~b~~B) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer, and

(ii) for this purpose, any amendment to the terms of a loan or credit facility ~~shall be~~is deemed to create a new loan or credit facility~~.~~, or

~~8.~~ (h) **90 Per Cent Exemption** - ~~One~~one or more persons ~~or companies~~ that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

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

(~~b~~ii) if an appraisal remedy referred to in subparagraph (~~a~~i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in ~~subsection 185(4)~~section 190 of the ~~OBCA~~CBCA and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.

(2) Despite subparagraph ~~2~~(~~c~~b)(iii) of section 5.5, if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemptions in paragraphs ~~2~~(b) and ~~3~~(c) of subsection (1), require minority approval under this ~~Rule~~Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for those exemptions are met.

(3) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph ~~7~~(g) of subsection (1) does not apply, the fair market value tests for the exemptions in paragraphs ~~2~~(b) and ~~3~~(c) of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves interested parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.

(4) Subparagraphs ~~2~~(a~~b~~)(i), (~~b~~iii)[35] and (~~d~~iv) of section 5.5 apply to paragraph ~~3~~(c) of subsection 5.7(1) with appropriate modifications.

(5) If there are two or more classes of affected securities, paragraph ~~8~~(h) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1 Independence and Qualifications of Valuator

(1) Every formal valuation required by this ~~Rule~~Instrument for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.

(2) Subject to subsections (3) and (4), it is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.

(3) A valuator is not independent of an interested party in connection with a transaction if

(a) the valuator is an associated or affiliated entity or issuer insider of the interested party~~;~~,

(b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction~~;~~,

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction~~;~~,

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group~~;~~,

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transaction and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation~~;~~, or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entity of the valuator.

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

[35] Correction to confirm that subparagraph 2(c) of section 5.5 applies to paragraph (c)of subsection 5.7(1).

6.2 Disclosure ~~Re~~Regarding Valuator - An issuer or offeror required to obtain a formal valuation for a transaction shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent~~;~~,

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence~~;~~,

(c) a description of the compensation paid or to be paid to the valuator~~;~~,

(d) a description of any other factors relevant to a perceived lack of independence of the valuator~~;~~,

(e) the basis for determining that the valuator is qualified~~;~~, and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).

6.3 Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid~~;~~,

(b) the affected securities, in the case of a business combination~~;~~,

(c) subject to subsection (2), any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraph (a) or (b)~~;~~, and

(d) subject to subsection (2), the non-cash assets involved in a related party transaction.

(2) A formal valuation of non-cash consideration or assets referred to in paragraph (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market~~;~~,

(b) the person ~~or company~~ that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person ~~or company~~ has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed~~;~~,

(c) in the case of an insider bid, issuer bid or business combination

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required~~;~~, and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs 4(a) and (b) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.

6.4 Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.

(2) A person ~~or company~~ preparing a formal valuation under this ~~Rule~~Instrument shall

(a) prepare the formal valuation in a diligent and professional manner~~;~~,

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed;

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b);

(d) in determining the fair market value of offeree securities or affected securities, not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest; and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

6.5 Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues;

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so;

(c) indicates an address where a copy of the formal valuation is available for inspection; and

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

6.6 Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders; or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7 Valuator's Consent - An issuer or offeror required to obtain a formal valuation shall

(a) obtain the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained~~;~~, and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

We refer to the formal valuation dated •, which we prepared for (indicate name of the person ~~or company~~) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the filing of the formal valuation with the ~~Ontario Securities Commission~~securities regulatory authority and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.

6.8 Disclosure of Prior Valuation

(1) A person ~~or company~~ required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction~~;~~,

(b) indicate an address where a copy of the prior valuation is available for inspection~~;~~, and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person ~~or company~~ that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this ~~Rule~~Instrument, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person ~~or company~~ required to disclose the prior valuation~~;~~,

(b) the prior valuation is not reasonably obtainable by the person ~~or company~~ required to disclose it, irrespective of any obligations of confidentiality~~;~~, and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).

6.9 Filing of Prior Valuation - A person ~~or company~~ required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.

6.10 Consent of Prior Valuator Not Required - Despite section ~~196~~2.19 of ~~the Regulation,~~NI 62-104, a person ~~or company~~ required to disclose a prior valuation under this ~~Rule~~Instrument is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.

PART 7 INDEPENDENT DIRECTORS

7.1 Independent Directors

(1) ~~Subject to subsections (2) and (3)~~For the purposes of this Instrument, it is a question of fact as to whether a director of an issuer is independent.

(2) A director of an issuer is not independent in connection with a transaction if he or she

(a) is an interested party in the transaction~~;~~,

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer~~;~~,

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer~~;~~, or

(d) has a material financial interest in an interested party or an affiliated entity of an interested party~~; or~~.

(3) ~~(e) would reasonably be expected to~~An independent director of an issuer shall not receive a~~a~~ny benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer~~.~~ or a payment for completion of the transaction.[36]

(4) ~~(3)~~ For the purposes of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1 General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

(2) Subject to section 8.2, in determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or ~~senior~~ officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer~~;~~,

(b) an interested party~~;~~,

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or ~~senior~~ officer of one or more entities that are neither interested parties nor issuer insiders of the issuer~~;~~, or

(d) a joint actor with a person ~~or company~~ referred to in paragraph (b) or (c) in respect of the transaction.

8.2 Second Step Business Combination - Despite subsection 8.1(2), the votes attached to securities acquired under a ~~formal~~ bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid~~;~~,

(b) the security holder that tendered the securities to the bid was not

(i) a direct or indirect party to any connected transaction to the ~~formal~~ bid, or

(ii) entitled to receive, directly or indirectly, in connection with the ~~formal~~ bid

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

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater

[36] A independent director should not receive a benefit that is not generally available to security holders as a consequence of a transaction even if the intention to make the payment was not formed until after the transaction closed.

than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities~~;~~,

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

(d) the business combination is completed no later than 120 days after the date of expiry of the ~~formal~~ bid~~;~~,

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the ~~formal~~ bid~~;~~ and

(f) the disclosure document for the ~~formal~~ bid

(i) disclosed that if the offeror acquired securities under the ~~formal~~ bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the ~~formal~~ bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) identified the securities, if known to the offeror after reasonable inquiry, the votes attached to which would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

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

(A) were reasonably foreseeable to the offeror, and

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

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

PART 9 EXEMPTION

9.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption.

(3) In Quebec, an exemption referred in subsection (1) is granted under section 263 of the Securities Act (R.S.Q., C. V-1).

PART 10 EFFECTIVE DATE

10.1 Effective Date

This Instrument comes into force ****.

~~**9.1 Exemption -** The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.~~

~~ONTARIO SECURITIES COMMISSION~~
COMPANION POLICY 61-~~501~~101CP
~~TO ONTARIO SECURITIES COMMISSION RULE 61-501~~
~~INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS~~
TO MULTILATERAL INSTRUMENT 61-101
~~AND RELATED PARTY~~PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

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~~ONTARIO SECURITIES COMMISSION~~COMPANION POLICY 61-~~501~~101CP
~~TO ONTARIO SECURITIES COMMISSION RULE 61-501~~
~~INSIDER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS~~
TO MULTILATERAL INSTRUMENT 61-101
~~AND RELATED PARTY~~PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

PART 1 GENERAL

1.1 **General -** The Autorité des marchés financiers and the Ontario Securities Commission ~~regards~~(or "we") regard it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. ~~In~~We are of the view ~~of the Commission~~that, issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and the fulfilment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

~~The Commission does~~We do not consider that the types of transactions covered by ~~Rule 61-501 (the "Rule") are~~Instrumentare inherently unfair. ~~The Commission recognizes~~We recognize, however, that these transactions are capable of being abusive or unfair, and has made the ~~Rule~~Instrument to address this.

This Policy expresses ~~the Commission's views~~our view on certain matters related to the ~~Rule~~Instrument.

PART 2 INTERPRETATION

2.1 Definitions

Terms used in this Policy are defined or interpreted in the Instrument, National Instrument 14-101 *Definitions* or a definition instrument in force in the jurisdiction.

2.2 ~~2.1~~ Equal Treatment of Security Holders

(1) **Security Holder Choice -** The definitions of business combination, collateral benefit and interested party, as well as other provisionts in the ~~Rule~~Instrument, include the concept of identical treatment of security holders in a transaction. For the purposes of the ~~Rule~~Instrument, if security holders have an identical opportunity under a transaction, then they are considered to be treated identically. For example, if, under the terms of a business combination, each security holder has the choice of receiving, for each affected security, either $10 in cash or one common share of ABC Co., ~~the Commission regards~~we regard the security holders as having identical entitlements in amount and form, and as receiving identical treatment, even though they may not all make the same choice. This interpretation also applies where the ~~Rule~~Instrument refers to consideration that is "at least equal in value" and "in the same form", such as in the provisions on second step business combinations.

(2) **Multiple Classes of Equity Securities -** The definitions of business combination and interested party, and the provisions on second step business combinations in section 8.2 of the ~~Rule~~Instrument, refer to circumstances where an issuer carrying out a business combination or related party transaction has more than one class of equity securities. The ~~Rule~~Instrument's treatment of these transactions depends on whether the entitlements of the holders of one class under the transaction are greater than those of the holders of the other classes in relation to the voting and financial participating interests in the issuer represented by the respective securities.

For example: An issuer has outstanding Subordinate Voting Shares carrying one vote per share, and Multiple Voting Shares carrying ten votes per share, with the shares of the two classes otherwise carrying identical rights. Under the terms of a business combination, holders of the Subordinate Voting Shares will receive $10 per share. For the Multiple Voting shareholders to be regarded as not being entitled to greater consideration than the Subordinate Voting shareholders under the ~~Rule~~Instrument, the Multiple Voting shareholders must receive no more than $10 per share. As a second example: An issuer has the same share structure as the issuer in the first example. Under the terms of a business combination, Subordinate Voting shareholders will receive, for each Subordinate Voting Share, $10 and one Subordinate Voting Share of a successor issuer, carrying one vote per share. For the Multiple Voting shareholders to be regarded as not being entitled to greater consideration than the Subordinate Voting shareholders under the ~~Rule~~Instrument, the Multiple Voting shareholders must receive, for each Multiple Voting Share, no more than $10 and one Multiple Voting Share of the successor issuer, carrying no more than ten votes per share and otherwise carrying no greater rights than those of the Subordinate Voting Shares of the successor issuer.

(3) **Related Party Holding Securities of Other Party to Transaction -** The ~~Rule~~Instrument sets out specific criteria for determining related party and interested party status. Without limiting the application of those criteria, a related party of an issuer is not considered to be treated differently from other security holders of the issuer in a transaction, or to receive a collateral benefit, solely by reason of being a security holder of another party to the transaction. For example, if ABC Co. proposes to amalgamate with XYZ Co., the fact that a director of ABC Co., who is not a control ~~block holder~~person of ABC Co., owns common shares of XYZ Co. (but less than 50 per cent) will not, in and of itself, cause the amalgamation to be considered a business combination for ABC Co. under the ~~Rule~~Instrument.

(4) **Consolidation of Securities -** One of the methods that may be used to effect a business combination is a consolidation of an issuer's securities at a ratio that eliminates the entire holdings of most holders of affected securities, through the elimination of post-consolidated fractional interests. Where this or a similar method is used, the security holders whose entire holdings are not eliminated are not considered to be treated identically to the general body of security holders under the ~~Rule~~Instrument.

(5) **Principle of Equal Treatment in Business Combinations -** The ~~Rule~~Instrument contemplates that a related party of an issuer might not be treated identically to all other security holders in the context of a business combination in which a person ~~or company~~ other than that related party acquires the issuer. There are provisions in the ~~Rule~~Instrument, including the minority approval requirement, that are intended to address this circumstance. Despite these provisions, ~~the Commission is~~we are of the view that, as a general principle, security holders should be treated equally in the context of a business combination, and that differential treatment is only justified if its benefits to the general body of security holders outweigh the principle of equal treatment. While ~~the Commission~~we will generally rely on an issuer's review and approval process, in combination with the provisions of the ~~Rule~~Instrument, to achieve fairness for security holders, ~~the Commission~~we may intervene if it appears that differential treatment is not reasonably justified. Giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.

~~2.2~~2.3 Joint Actors in Bids - The definition of joint actor in the ~~Rule~~Instrument incorporates the interpretation of the term "acting jointly or in concert" in section ~~91~~1.7 of the ~~Act,~~NI 62-104, subject to certain qualifications. Among other things, the concept is relevant in determining whether a take-over bid is an insider bid under the ~~Rule~~Instrument and whether securities acquired by an offeror in a ~~formal~~ bid can be included in a minority approval vote regarding a second step business combination under section 8.2 of the ~~Rule~~Instrument. Without limiting the application of the definition, ~~the Commission is~~we are of the view that, for a ~~formal~~ bid, an offeror and an insider may be viewed as joint actors if an agreement, commitment or understanding between the offeror and the insider provides that the insider shall not tender to the bid, or provides the insider with an opportunity not offered to all security holders to maintain or acquire a direct or indirect equity interest in the offeror, the issuer or a material asset of the issuer.

~~**2.3 Director for Purposes of Section 1.2 - Liquid Market -** Subsection 1.2(3) of the Rule requires a letter to be sent to the Director for purposes of satisfying the liquid market test in certain circumstances. That letter should be sent to the Director, Take-over/Issuer Bids, Mergers & Acquisitions.~~[37]

2.4 Direct or Indirect Parties to a Transaction

(1) The ~~Rule~~Instrument makes references to direct and indirect parties to a transaction in the definition of connected transactions and in subparagraph 8.2(b)(i) regarding minority approval for a second step business combination. For the purposes of the ~~Rule~~Instrument, a person ~~or company~~ is considered to be an indirect party if, for example, a direct party to the transaction is a subsidiary entity, nominee or agent of the person ~~or company~~. A person ~~or company~~ is not an indirect party merely because it negotiates or approves the transaction on behalf of a party, holds securities of a party or agrees to support the transaction in the capacity of a security holder of a party.

(2) For the purposes of the ~~Rule, the Commission~~Instrument, we does not consider ~~an entity~~a person to be a direct or indirect party to a business combination solely because the ~~entity~~person receives pro rata consideration in its capacity as a security holder of the issuer carrying out the business combination.

2.5 Amalgamations - Under the ~~Rule~~Instrument, an amalgamation may be a business combination, related party transaction or neither, depending on the circumstances. For example, an amalgamation is a business combination for an issuer if, as a consequence of the amalgamation, holders of equity securities of the issuer become security holders of the amalgamated entity, unless an exception in one of the lettered paragraphs in the definition of business combination applies. An amalgamation is a related party transaction for an issuer rather than a business combination

[37] We have deleted the requirement previously set out in section 1.2 (3) of OSC Rule 61-501.

if, for example, a wholly-owned subsidiary entity of the issuer amalgamates with a related party of the issuer, leaving the equity securities of the issuer unaffected.

2.6 Transactions Involving More than One Reporting Issuer - The characterization of a transaction or the availability of a valuation or minority approval exemption under the ~~Rule~~Instrument must be considered individually for each reporting issuer involved in the transaction. For example, an amalgamation may be a downstream transaction for one party and a business combination for the other, in which case the latter party is the only party to whom the requirements of the ~~Rule~~Instrument may apply.

2.7 Previous Arm's Length Negotiations Exemption

(1) For the purposes of the formal valuation exemptions based on previous arm's length negotiations in paragraph ~~3~~(c) of subsection 2.4(1) and paragraph ~~3~~(c) of subsection 4.4(1) of the ~~Rule~~Instrument for insider bids and business combinations, respectively, the arm's length relationship must be between the selling security holder and all persons ~~or companies~~ that negotiated with the selling security holder.

(2) ~~The Commission notes~~We note that the previous arm's length negotiations exemption is based on the view that those negotiations can be a substitute for a valuation. An important requirement for the exemption to be available is that the offeror or proponent of the business combination, as the case may be, engages in "reasonable inquiries" to determine whether various circumstances exist. In ~~the Commission's~~our view, if this requirement cannot be satisfied through receipt of representations of the parties directly involved or some other suitable method, the offeror or proponent of the transaction is not entitled to rely on this exemption.

2.8 Connected Transactions

(1) "Connected transactions" is a defined term in the ~~Rule~~Instrument, and reference is made to connected transactions in a number of parts of the ~~Rule~~Instrument. For example, subparagraph ~~2~~(~~c~~b)(iii) of section 5.5 of the ~~Rule~~Instrument requires connected transactions to be aggregated, in certain circumstances, for the purpose of determining the availability of the formal valuation exemption for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization. In other circumstances, it is possible for an issuer to rely on an exemption for each of two or more connected transactions. However, ~~the Commission~~we may intervene if ~~it believes~~ we believe that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the ~~Rule~~Instrument.

(2) One method of acquiring all the securities of an issuer is through a plan of arrangement or similar process comprised of a series of two or more interrelated steps. The series of steps is the "transaction" for the purposes of the definition of business combination. However, a related party transaction that is carried out in conjunction with a business combination, and that is not simply one of the procedural steps in implementing the acquisition of the affected securities in the business combination, is subject to the ~~Rule~~Instrument's requirements for related party transactions. This applies where, for example, a related party buys some of the issuer's assets that the acquirer in the business combination does not want.

(3) An agreement, commitment or understanding that a security holder will tender to a ~~formal~~ bid or vote in favour of a transaction is not, in and of itself, a connected transaction to the bid or to the transaction for purposes of the ~~Rule~~Instrument.

2.9 Time of Agreement - A number of provisions in the ~~Rule~~Instrument refer to the time a business combination or related party transaction is agreed to. This should be interpreted as the time the issuer first makes a legally binding commitment to proceed with the transaction, subject to any conditions such as security holder approval. Where the issuer does not technically negotiate the transaction with another party, such as in the case of a share consolidation, the time the transaction is agreed to should be interpreted as the time at which the issuer's board of directors determines to proceed with the transaction, subject to any conditions.

2.10 "Acquire the Issuer" - In some definitions and elsewhere in the ~~Rule~~Instrument, reference is made to a transaction in which a related party would "directly or indirectly acquire the issuer … through an amalgamation, arrangement or otherwise, whether alone or with joint actors". This refers to the acquisition of all of the issuer, not merely the acquisition of a control position. For example, a related party "acquires" an issuer when it acquires all of the securities of the issuer that it does not already own, even if that related party held a control position in the issuer prior to the transaction.

PART 3 MINORITY APPROVAL

3.1 Meeting Requirement - The definition of minority approval and subsections 4.2(2) and 5.3(2) of the ~~Rule~~Instrument provide that minority approval, if required, must be obtained at a meeting of holders of affected securities. The issuer may be able to demonstrate that holders of a majority of the securities that would be eligible to be voted at a meeting would vote in favour of the transaction under consideration. In this circumstance, the ~~Director~~regulator or the securities regulatory authority will consider granting an exemption under section 9.1 of the ~~Rule~~Instrument from the requirement to hold a meeting, conditional on security holders being provided with disclosure similar to that which would be available to them if a meeting were held.

3.2 Second Step Business Combination Following an Unsolicited Take-over Bid - Section 8.2 of the ~~Rule~~Instrument allows the votes attached to securities acquired under ~~a formal~~ bid to be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if certain conditions are met. One of the conditions is that the security holder that tendered the securities in the bid not receive an advantage in connection with the bid, such as a collateral benefit, that was not available to other security holders. There may be circumstances where this condition could cause difficulty for an offeror who wishes to acquire all of an issuer through a business combination following a bid that was unsolicited by the issuer. For example, in order to establish that a benefit received by a tendering security holder is not a collateral benefit under the ~~Rule~~Instrument, the offeror may need the cooperation of an independent committee of the offeree issuer during the bid. This cooperation may not be forthcoming if the bid is unfriendly. In this type of circumstance, the fact that the bid was unsolicited would normally be a factor the ~~Director~~regulator or the securities regulatory authority would take into account in considering whether exemptive relief should be granted to allow the securities to be voted.

3.3 Special Circumstances - As the purpose of the ~~Rule~~Instrument is to ensure fair treatment of minority security holders, abusive minority tactics in a situation involving a minimal minority position may cause the ~~Director~~regulator or the securities regulatory authority to grant an exemption from the requirement to obtain minority approval. Where an issuer has more than one class of equity securities, exemptive relief may also be appropriate if the ~~Rule~~Instrument's requirement of separate minority approval for each class could result in unfairness to security holders who are not interested parties, or if the policy objectives of the ~~Rule~~Instrument would be accomplished by the exclusion of an interested party's votes in one or more, but not all, of the separate class votes.

PART 4 ~~FORM 33~~ DISCLOSURE

4.1 Insider Bids ~~- Form 33~~ Disclosure - ~~Form 32 of the Regulation (the form for a take-over bid circular)~~ Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form ~~33 of the Regulation~~62-104F1 of NI 62-104 and by Form 62-104F2 , appropriately modified. In ~~the~~our view ~~of the Commission~~, Form ~~33~~62-104F2 disclosure would generally include, in addition to Form ~~32~~62-104F1 disclosure, disclosure for the following items, with necessary modifications, in the context of an insider bid:

1. Item ~~10~~9 - Reasons for Bid
2. Item ~~14~~13 - Acceptance of Bid
3. Item ~~15~~14 - Benefits from Bid
4. Item ~~17~~16 - Other Benefits ~~to Insiders, Affiliates and Associates~~
5. Item ~~18~~17 - Arrangements Between Issuer and Security Holder
6. Item ~~19~~18 - Previous Purchases and Sales
7. Item ~~21~~20 - Valuation
8. Item ~~24~~23 - Previous Distribution
9. Item ~~25~~24 - Dividend Policy
10. Item ~~26~~25 - Tax Consequences
11. Item ~~27~~26 - Expenses of Bid

4.2 Business Combinations and Related Party Transactions ~~- Form 33~~ Disclosure - Paragraphs 4.2(3)(a) and 5.3(3)(a) of the ~~Rule~~Instrument require in the information circulars for a business combination and a related party transaction, respectively, the disclosure required by Form ~~33 of the Regulation~~62-104F2 , to the extent applicable and with necessary modifications. In ~~the~~our view ~~of the Commission~~, Form ~~33~~62-104F2 disclosure would generally include disclosure for the following items, with necessary modifications, in the context of those transactions:

1. Item ~~5~~ 4 - Consideration ~~Offered~~
2. Item ~~10~~9 - Reasons for Bid
3. Item ~~11~~10 - Trading in Securities to be Acquired
4. Item ~~12~~11 - Ownership of Securities of Issuer
5. Item ~~13~~12 - Commitments to Acquire Securities of Issuer
6. Item ~~14~~13 - Acceptance of Bid

7. Item ~~15~~14 - Benefits from Bid
8. Item ~~16~~15 - Material Changes in the Affairs of Issuer
9. Item ~~17~~16 - Other Benefits ~~to Insiders, Affiliates and Associates~~
10. Item ~~18~~17 - Arrangements Between Issuer and Security Holder
11. Item ~~19~~18 - Previous Purchases and Sales
12. Item ~~20~~19 - Financial Statements
13. Item ~~21~~20 - Valuation
14. Item ~~22~~21 - Securities of Issuer to be Exchanged for Others
15. Item ~~23~~22 - Approval of Bid
16. Item ~~24~~23 - Previous Distribution
17. Item ~~25~~24 - Dividend Policy
18. Item ~~26~~25 - Tax Consequences
19. Item ~~27~~26 - Expenses of Bid
20. Item ~~28 - Judicial Developments~~21. ~~Item~~ 29 - Other Material ~~Facts~~Information

~~22.~~ 21. Item 30 - Solicitations

PART 5 FORMAL VALUATIONS

5.1 General

(1) The ~~Rule~~Instrument requires formal valuations in a number of circumstances. ~~The Commission is~~We are of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of a valuation does not by itself fulfil this requirement.

(2) The disclosure standards for formal valuations in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators each generally represent a reasonable approach to meeting the applicable legal requirements. Specific disclosure standards, however, cannot be construed as a substitute for the professional judgment and responsibility of the valuator and, on occasion, additional disclosure may be necessary.

(3) An issuer that is required to obtain a formal valuation, or the offeree issuer in the case of an insider bid, should work in cooperation with the valuator to ensure that the requirements of the ~~Rule~~Instrument are satisfied. At the valuator's request, the issuer should promptly furnish the valuator with access to the issuer's management and advisers, and to all material information in the issuer's possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information on which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts, projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions on which it is based, and adjust the information accordingly.

(4) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances. In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator.

(5) Subsection 2.3(2) of the ~~Rule~~Instrument provides that in the context of an insider bid, an independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to, determine who the valuator will be and supervise the preparation of the formal valuation. Although the subsection also requires the independent committee to use its best efforts to ensure that the valuation is completed and provided to the offeror in a timely manner, ~~the Commission is aware~~we areaware that an independent committee could attempt to use the subsection to delay or impede an insider bid viewed by the committee as unfriendly. In a situation where an offeror is of the view that an independent committee is not acting in a timely manner in having the formal valuation prepared, the offeror may seek relief under section 9.1 of the ~~Rule~~Instrument from the requirement that the offeror obtain a valuation.

(6) Similarly, in circumstances where an independent committee is of the view that a bid that has been announced will not actually be made or that the bid is not being made in good faith, the independent committee may apply for relief from the requirements of subsection 2.3(2) of the ~~Rule~~Instrument.

(7) National Policy 48 -- *Future-Oriented Financial Information* ~~does~~and in Quebec, Regulation Q-11 respecting Future-Oriented Financial Information do not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.

5.2 Independent Valuators - While, except in certain prescribed situations, the ~~Rule~~Instrument provides that it is a question of fact as to whether a valuator (which for the purposes of this section includes a person ~~or company~~ providing a liquidity opinion) is independent, situations have been identified in the past that raise serious concerns for ~~the Commission~~us. These situations, which are set out below, must be assessed for materiality by the board or committee responsible for choosing the valuator, and disclosed in the disclosure document for the transaction. In determining the independence of the valuator from an interested party, relevant factors may include whether

(a) the valuator or an affiliated entity of the valuator has a material financial interest in future business under an agreement, commitment or understanding involving the issuer, the interested party or an associated or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator was first contacted for the purpose of the formal valuation or opinion, the valuator or an affiliated entity of the valuator

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of the interested party, or an associated or affiliated entity of the interested party, other than the issuer,

(ii) had a material involvement in an evaluation, appraisal or review of the financial condition of the issuer, or an associated or affiliated entity of the issuer, if the evaluation, appraisal or review was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iii) acted as a lead or co-lead underwriter of a distribution of securities by the interested party, or acted as a lead or co-lead underwriter of a distribution of securities by the issuer if the retention of the underwriter was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iv) had a material financial interest in a transaction involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in a transaction involving the issuer other than by virtue of performing the services referred to in subparagraph (b)(ii) or (b)(iii); or

(c) the valuator or an affiliated entity of the valuator is

(i) a lead or co-lead lender or manager of a lending syndicate in respect of the transaction in question, or

(ii) a lender of a material amount of indebtedness in a situation where the interested party or the issuer is in financial difficulty, and the transaction would reasonably be expected to have the effect of materially enhancing the lender's position.

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(2)(d), 3.2(e)(d), 4.2(3)(f)(e), 5.2(1)(e) and 5.3(3)(fe) of the ~~Rule~~Instrument require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the ~~Rule~~Instrument should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include

whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the ~~Rule~~Instrument are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, ~~the Commission is~~we are of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing ~~the Commission's~~our interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the ~~Rule~~Instrument only mandates an independent committee in limited circumstances, ~~the Commission is~~ we are of the view that it generally would be appropriate for issuers involved in a material transaction to which the ~~Rule~~Instrument applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, ~~the Commission~~we also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in ~~the Commission's~~our view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in ~~the Commission's~~our view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

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

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

PART 1 INTERPRETATION

1.1 Definitions and Interpretations – For the purpose of this

"affected security" means

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

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

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

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

"associated entity", where used to indicate a relationship with a person, has the meaning ascribed to the term "associate" in subsection 1(1) of National Instrument 62-104 *Take-Over Bids and Issuer Bids;*

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

(a) securities beneficially owned by its subsidiary entity, and

(b) for the purposes of the definitions of collateral benefit, control person, downstream transaction and related party, section 1.6 of NI 62-104 applies in determining beneficial ownership of securities;

"bid" means a take-over bid or an issuer bid to which Part 2 of NI 62-104 applies;

"bona fide lender" means a person that

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

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

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

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

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

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

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

(d) a downstream transaction for the issuer, or

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

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

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

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

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

(B) a collateral benefit, or

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

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

"class" includes a series of a class;

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

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

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

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

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

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

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

(iv) (A) at the time the transaction is agreed to or the bid is publicly announced, the related

party and its associated entities beneficially own or exercise control or direction over less than one per cent of the outstanding securities of each class of equity securities of the issuer, or

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

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

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

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

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

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

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

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

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

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

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

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

"control person" means

(a) a person that holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer; or

(b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, that holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

"controlled": for the purposes only of the definition of "subsidiary entity", an entity is considered to be controlled by a person if

(a) in the case of an entity that has directors, the person directly or indirectly beneficially owns or exercises control or direction over voting securities of the entity which, if exercised, would entitle the

person to elect a majority of the directors of the entity, unless the person beneficially owns or exercises control or direction over voting securities only to secure an obligation,

(b) in the case of a partnership or other entity that does not have directors, other than a limited partnership, the person beneficially owns or exercises control or direction over more than 50 per cent of the voting interests in the partnership or other entity, or

(c) in the case of an entity that is a limited partnership, the person is the general partner or controls the general partner within the meaning of paragraph (a) or (b);

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

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

"disclosure document" means

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

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

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

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

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

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

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

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

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

"entity" means a person;

"equity security" has the meaning ascribed to that term in section 1.1 of NI 62-104;

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

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

"freely tradeable" means, for securities, that

(a) the securities are transferable,

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

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

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

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

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

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

"income trust" means a trust or other person that issues securities that entitle the security holders to net cash flows generated by

(c) an underlying business owned by the trust or another person, or

(d) the income-producing properties owned by the trust or other person;

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

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

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

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

(a) an issuer insider of the offeree issuer,

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

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

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

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

"interested party" means

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

(b) for an issuer bid

(i) the issuer, and

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

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

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

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

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

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

(B) a collateral benefit, or

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

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

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

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

(A) a collateral benefit, or

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

"issuer bid" has the meaning ascribed to that term in section 1.1 of NI 62-104;

"issuer insider" means, for an issuer

(a) a director or officer of the issuer,

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

(d) a person that has

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

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

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

"joint actors", when used to describe the relationship among two or more entities, means persons "acting jointly or in concert" as defined in section 1.7 of NI 62-104, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making a bid, or with a person involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;

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

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

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

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

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 5.1 (1), (2) and (3) of NI 62-104,

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

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

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 5.1 (1), (2) and (3) of NI 62-104, and

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

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

"OBCA" means the *Business Corporations Act,* R.S.O., 1990, c. B.16;

"offeree issuer" has the meaning ascribed to that term in section 1.1 of NI 62-104;

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

"offeror" has the meaning ascribed to that term in section 1.1 of NI 62-104;

"officer", for an issuer that is a limited partnership, includes an officer of the general partner of the issuer;

"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;

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

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

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

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

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

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

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

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

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

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

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

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

"published market": has the meaning ascribed to that term in section 1.1 of NI 62-104;

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

(a) a control person of the entity,

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

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

(d) a person that has

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

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

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

(e) a director or officer of

(i) the entity, or

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

(f) a person that manages or directs, to any substantial degree, the affairs or operations of the entity under an agreement, arrangement or understanding between the person and the entity, including the

general partner of an entity that is a limited partnership, but excluding a person acting under bankruptcy or insolvency law,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) retains services of the related party for valuable consideration;

(o) provides services to the related party;

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

"take-over bid" has the meaning ascribed to that term in section 1.1 of NI 62-104; and

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

1.2 Liquid Market

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the arithmetic average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month, if the published market does not

provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day.

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

1.4 Transactions by Underlying Operating Entity of Income Trust – For the purpose of this Instrument, a transaction of an underlying operating entity of an income trust is deemed to be a transaction of the income trust, and a related party of the underlying operating entity is deemed to be a related party of the income trust.

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

1.6 Referencing Instruments – In this Instrument, a reference to

(a) a national instrument, after its first citation, may be made by citing the number of the instrument preceded by "NI", and

(b) a form in a national instrument, after its first citation, may be made by citing the number of the form preceded by "Form".

PART 2 INSIDER BIDS

2.1 Application

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

(2) This Part does not apply to a bid that is an insider bid solely because of the application of section 1.6 of the NI 62-104 to an agreement between the offeror and a security holder of the offeree issuer that offeree securities beneficially owned by the security holder, or over which the security holder exercises control or direction, will be tendered to the bid, if

(a) the security holder is not a joint actor with the offeror, and

(b) the general nature and material terms of the agreement to tender are disclosed in a news release and report filed under Part 6 of the NI 62-104, or are otherwise generally disclosed.

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

2.2 Disclosure

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

(a) the background to the insider bid,

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

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

(d) the disclosure required by Form 62-104F2 *Issuer Bid Circular* of NI 62-104 to the extent applicable and with necessary modifications.

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

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

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

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

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

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

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

2.3 Formal Valuation

(1) Subject to section 2.4, the offeror in an insider bid shall

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

(b) provide the disclosure required by section 6.2,

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

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

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

(a) determine who the valuator will be,

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

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

2.4 Exemptions from Formal Valuation Requirement

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

(a) **Discretionary Exemption** - the offeror has been granted an exemption from section 2.3 under section 9.1,

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

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

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

(A) the making of the insider bid,

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

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

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

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

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

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

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

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

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

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

(A) had not been generally disclosed, and

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

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

(A) had not been generally disclosed, and

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

(vii) the offeror does not know, after reasonable inquiry, of any material information in respect of the offeree issuer or the offeree securities since the time of each of the agreements referred

to in subparagraph (i) that has not been generally disclosed and could reasonably be expected to increase the value of the offeree securities,or

(d) **Auction** - all of the following conditions are satisfied:

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

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

(B) one or more proposed transactions are outstanding that

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

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

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

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

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

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

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

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

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

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

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

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

PART 3 ISSUER BIDS

3.1 Application

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Formal Valuation

(1) Subject to section 3.4, an issuer that makes an issuer bid shall

(a) obtain a formal valuation,

(b) provide the disclosure required by section 6.2,

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

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

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

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

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

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

(a) **Discretionary Exemption** - the issuer has been granted an exemption from section 3.3 under section 9.1,

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

(c) **Liquid Market** - the issuer bid is made for securities for which

(i) a liquid market exists,

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

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

PART 4 BUSINESS COMBINATIONS

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

(a) the issuer is not a reporting issuer,

(b) the issuer is a mutual fund, or

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

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

4.2 Meeting and Information Circular

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

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

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 62-104F2, to the extent applicable and with necessary modifications,

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

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

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

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

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

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

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

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

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

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

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

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

4.3 Formal Valuation

(1) Subject to section 4.4, an issuer shall obtain a formal valuation for a business combination if

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

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

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

(a) provide the disclosure required by section 6.2,

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

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

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

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

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

4.4 Exemptions from Formal Valuation Requirement

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

(a) **Discretionary Exemption -** the issuer has been granted an exemption from section 4.3 under section 9.1,

(b) **Issuer Not Listed on Specified Markets -** no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States,

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

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

(A) the business combination,

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

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

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

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

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

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

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

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

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

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

(A) had not been generally disclosed, and

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

(vi) any of the agreements referred to in subparagraph (i) was entered into with a selling security holder by an entity other than the person proposing to carry out the business combination with the issuer, the person proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of that

agreement, the entity did not know of any material information in respect of the issuer or the affected securities that

(A) had not been generally disclosed, and

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

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

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

(i) the business combination is publicly announced while

(A) one or more proposed transactions are outstanding that

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

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

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

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

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

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

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

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

(iv) the disclosure document for the bid

(A) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in subparagraphs (ii) and (iii),

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

(I) were reasonably foreseeable to the offeror, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.5 Minority Approval - Subject to section 4.6, an issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6 Exemptions from Minority Approval Requirement

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

(a) **Discretionary Exemption** - The issuer has been granted an exemption from section 4.5 under section 9.1.

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

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

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

(c) **Other Transactions Exempt from Formal Valuation** – The circumstances described in paragraph (g) of subsection 4.4 (1).

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

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

(a) the transaction is not a business combination,

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

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

PART 5 RELATED PARTY TRANSACTIONS

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

(a) the issuer is not a reporting issuer,

(b) the issuer is a mutual fund,

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

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

(d) the parties to the transaction consist solely of

(i) a person and one or more of its wholly-owned subsidiary entities, or

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

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

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

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

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

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

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

(i) the transaction is a distribution

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

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

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

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

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

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

5.2 Material Change Report

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

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

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

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

(d) a description of

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

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

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

view or abstention by a director and any material disagreement between the board and the special committee,

(f) subject to subsection (3), a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction,

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

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

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

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

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

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

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

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

5.3 Meeting and Information Circular

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

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

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 62-104F2 , to the extent applicable and with necessary modifications,

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

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

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

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

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

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

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

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

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

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

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

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

5.4 Formal Valuation

(1) Subject to section 5.5, an issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

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

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

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

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

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

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

5.5 Exemptions from Formal Valuation Requirement - Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

(a) **Discretionary Exemption** - the issuer has been granted an exemption from section 5.4 under section 9.1,

(b) **Fair Market Value Not More Than 25% of Market Capitalization** - at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves interested parties, exceeds 25 per cent of the issuer's market capitalization, and for this purpose

(i) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds the threshold for this exemption shall be made by the issuer's board of directors acting in good faith,

(ii) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject

matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the transaction shall be deemed to be the consideration received by those persons,

(iii) if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemption in this paragraph (b), require formal valuations under this Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for this exemption are met, and

(iv) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets (the "future transaction"), the calculation of the fair market value for the initial transaction shall include the fair market value, as of the time the initial transaction is agreed to, of the maximum number of securities or other consideration that the issuer may be required to issue or pay in the future transaction,

(c) **Issuer Not Listed on Specified Markets** - no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States,

(d) **Distribution of Securities for Cash** - the transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(i) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(ii) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party,

(e) **Certain Transactions in the Ordinary Course of Business** - the transaction is

(i) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal or movable property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

(ii) a lease of real or immovable property or personal or movable property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to the issuer than if the lease was with a person dealing at arm's length with the issuer and the existence of which has been generally disclosed,

(f) **Transaction Supported by Arm's Length Control Block Holder** - the interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control person of the issuer and who, in the circumstances of the transaction

(i) is not also an interested party,

(ii) is at arm's length to the interested party, and

(iii) supports the transaction,

(g) **Bankruptcy, Insolvency, Court Order -**

(i) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(A) bankruptcy or insolvency law, or

(B) section 191 of the CBCA, any successor to that section, or equivalent legislation of a jurisdiction,

(ii) the court is advised of the requirements of this Instrument regarding formal valuations for related party transactions, and of the provisions of this paragraph 7, and

(iii) the court does not require compliance with section 5.4, or

(h) **Financial Hardship –**

(i) the issuer is insolvent or in serious financial difficulty,

(ii) the transaction is designed to improve the financial position of the issuer,

(iii) paragraph (g) is not applicable,

(iv) the issuer has one or more independent directors in respect of the transaction, and

(v) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(A) subparagraphs (i) and (ii) apply, and

(B) the terms of the transaction are reasonable in the circumstances of the issuer.

(i) **Asset Resale** –

(i) the subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

(A) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

(B) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction, and

(ii) the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section 6.2,

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

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

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

5.6 Minority Approval - Subject to section 5.7, an issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement

(1) Subject to subsections (2), (3), (4) and (5), section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

(a) **Discretionary Exemption** - the issuer has been granted an exemption from section 5.6 under section 9.1,

(b) **Fair Market Value Not More Than 25 Per Cent of Market Capitalization** - the circumstances described in paragraph (b) of section 5.5,

(c) **Fair Market Value Not More Than $2,500,000 – Distribution of Securities for Cash** - the circumstances described in paragraph(d) of section 5.5, if

(i) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States,

(ii) at the time the transaction is agreed to, neither the fair market value of the securities to be distributed in the transaction nor the consideration to be received for those securities, insofar as the transaction involves interested parties, exceeds $2,500,000,

(iii) the issuer has one or more independent directors in respect of the transaction who are not employees of the issuer, and

(iv) at least two-thirds of the directors described in subparagraph (iii) approve the transaction,

(d) **Other Transactions Exempt from Formal Valuation** - the circumstances described in paragraphs (e) and (f) of section 5.5,

(e) **Bankruptcy, Insolvency, Court Order** - the circumstances described in subparagraph (g)(i) of section 5.5, if the court is advised of the requirements of this Instrument regarding minority approval for related party transactions, and of the provisions of this paragraph, and the court does not require compliance with section 5.6,

(f) **Financial Hardship** - the circumstances described in paragraph (h) of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities,

(g) **Loan to Issuer, No Equity or Voting Component** –

(i) the transaction is a loan, or the creation of a credit facility, that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

(A) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

(B) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer,

(ii) and for this purpose, any amendment to the terms of a loan or credit facility is deemed to create a new loan or credit facility, or

(h) **90 Per Cent Exemption** - one or more persons that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

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

(ii) if an appraisal remedy referred to in subparagraph (i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in section 190 of the CBCA and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.

(2) Despite subparagraph (b)(iii) of section 5.5, if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemptions in paragraphs (b) and (c) of subsection (1), require minority approval under this Instrument, the fair market values for all of those transactions shall be aggregated in determining whether the tests for those exemptions are met.

(3) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph (g) of subsection (1) does not apply, the fair market value tests for the exemptions in paragraphs (b) and (c) of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves interested parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.

(4) Subparagraphs (b)(i), (iii) and (iv) of section 5.5 apply to paragraph (c) of subsection 5.7(1) with appropriate modifications.

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

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1 Independence and Qualifications of Valuator

(1) Every formal valuation required by this Instrument for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.

(2) Subject to subsections (3) and (4), it is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.

(3) A valuator is not independent of an interested party in connection with a transaction if

(a) the valuator is an associated or affiliated entity or issuer insider of the interested party,

(b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction,

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction,

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group,

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transaction and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation, or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entity of the valuator.

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

6.2 Disclosure Regarding Valuator - An issuer or offeror required to obtain a formal valuation for a transaction shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent,

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence,

(c) a description of the compensation paid or to be paid to the valuator,

(d) a description of any other factors relevant to a perceived lack of independence of the valuator,

(e) the basis for determining that the valuator is qualified, and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).

6.3 Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid,

(b) the affected securities, in the case of a business combination,

(c) subject to subsection (2), any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraph (a) or (b), and

(d) subject to subsection (2), the non-cash assets involved in a related party transaction.

(2) A formal valuation of non-cash consideration or assets referred to in paragraph (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market,

(b) the person that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed,

(c) in the case of an insider bid, issuer bid or business combination

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required, and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs 4(a) and (b) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.

6.4 Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.

(2) A person preparing a formal valuation under this Instrument shall

(a) prepare the formal valuation in a diligent and professional manner,

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed,

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b),

(d) in determining the fair market value of offeree securities or affected securities, not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest, and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

6.5 Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues,

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so,

(c) indicates an address where a copy of the formal valuation is available for inspection, and

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

6.6 Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders, or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7 Valuator's Consent - An issuer or offeror required to obtain a formal valuation shall

(a) obtain the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained, and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

We refer to the formal valuation dated •, which we prepared for (indicate name of the person) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the filing of the formal valuation with the securities regulatory authority and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.

6.8 Disclosure of Prior Valuation

(1) A person required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction,

(b) indicate an address where a copy of the prior valuation is available for inspection, and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this Instrument, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person required to disclose the prior valuation,

(b) the prior valuation is not reasonably obtainable by the person required to disclose it, irrespective of any obligations of confidentiality, and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).

6.9 Filing of Prior Valuation - A person required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.

6.10 Consent of Prior Valuator Not Required - Despite section 2.19 of NI 62-104, a person required to disclose a prior valuation under this Instrument is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.

PART 7 INDEPENDENT DIRECTORS

7.1 Independent Directors

(1) For the purposes of this Instrument, it is a question of fact as to whether a director of an issuer is independent.

(2) A director of an issuer is not independent in connection with a transaction if he or she

(a) is an interested party in the transaction,

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer,

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated

entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer, or

(d) has a material financial interest in an interested party or an affiliated entity of an interested party.

(3) An independent director of an issuer shall not receive any benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer or a payment for completion of the transaction.

(4) For the purposes of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1 General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

(2) Subject to section 8.2, in determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer,

(b) an interested party,

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or officer of one or more entities that are neither interested parties nor issuer insiders of the issuer, or

(d) a joint actor with a person referred to in paragraph (b) or (c) in respect of the transaction.

8.2 Second Step Business Combination - Despite subsection 8.1(2), the votes attached to securities acquired under a bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid,

(b) the security holder that tendered the securities to the bid was not

(i) a direct or indirect party to any connected transaction to the bid, or

(ii) entitled to receive, directly or indirectly, in connection with the bid

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

(B) a collateral benefit, or

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

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

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

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

(f) the disclosure document for the bid

(i) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) identified the securities, if known to the offeror after reasonable inquiry, the votes attached to which would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

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

(A) were reasonably foreseeable to the offeror, and

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

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

PART 9 EXEMPTION

9.2 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption to this Instrument, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption.

(3) In Quebec, an exemption referred in subsection (1) is granted under section 263 of the Securities Act (R.S.Q., C. V-1).

PART 10 EFFECTIVE DATE

10.1 Effective Date

This Instrument comes into force ****.

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

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

PART 1 GENERAL

1.1 **General -** The Autorité des marchés financiers and the Ontario Securities Commission (or "we") regard it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. We are of the view that issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and the fulfillment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

We do not consider that the types of transactions covered by this Instrument are inherently unfair. We recognize, however, that these transactions are capable of being abusive or unfair, and has made the Instrument to address this.

This Policy expresses our view on certain matters related to the Instrument.

PART 2 INTERPRETATION

2.3 Definitions

Terms used in this Policy are defined or interpreted in the Instrument, National Instrument 14-101 *Definitions* or a definition instrument in force in the jurisdiction.

2.4 Equal Treatment of Security Holders

(1) **Security Holder Choice -** The definitions of business combination, collateral benefit and interested party, as well as other provisions in the Instrument, include the concept of identical treatment of security holders in a transaction. For the purposes of the Instrument, if security holders have an identical opportunity under a transaction, then they are considered to be treated identically. For example, if, under the terms of a business combination, each security holder has the choice of receiving, for each affected security, either $10 in cash or one common share of ABC Co., we regard the security holders as having identical entitlements in amount and form, and as receiving identical treatment, even though they may not all make the same choice. This interpretation also applies where the Instrument refers to consideration that is "at least equal in value" and "in the same form", such as in the provisions on second step business combinations.

(2) **Multiple Classes of Equity Securities -** The definitions of business combination and interested party, and the provisions on second step business combinations in section 8.2 of the Instrument, refer to circumstances where an issuer carrying out a business combination or related party transaction has more than one class of equity securities. The Instrument's treatment of these transactions depends on whether the entitlements of the holders of one class under the transaction are greater than those of the holders of the other classes in relation to the voting and financial participating interests in the issuer represented by the respective securities.

For example: An issuer has outstanding subordinate voting shares carrying one vote per share, and multiple voting shares carrying ten votes per share, with the shares of the two classes otherwise carrying identical rights. Under the terms of a business combination, holders of the subordinate voting shares will receive $10 per share. For the multiple voting shareholders to be regarded as not being entitled to greater consideration than the subordinate voting shareholders under the Instrument, the multiple voting shareholders must receive no more than $10 per share. As a second example: An issuer has the same share structure as the issuer in the first example. Under the terms of a business combination, subordinate voting shareholders will receive, for each subordinate voting Share, $10 and one subordinate voting share of a successor issuer, carrying one vote per share. For the multiple voting shareholders to be regarded as not being entitled to greater consideration than the subordinate voting shareholders under the Instrument, the multiple voting shareholders must receive, for each multiple voting share, no more than $10 and one multiple voting share of the successor issuer, carrying no more than ten votes per share and otherwise carrying no greater rights than those of the subordinate voting shares of the successor issuer.

(3) **Related Party Holding Securities of Other Party to Transaction -** The Instrument sets out specific criteria for determining related party and interested party status. Without limiting the application of those criteria, a related party of an issuer is not considered to be treated differently from other security holders of the issuer in a transaction, or to receive a collateral benefit, solely by reason of being a security holder of another party to the transaction. For example, if ABC Co. proposes to amalgamate with XYZ Co., the fact that a director of

ABC Co., who is not a control person of ABC Co., owns common shares of XYZ Co. (but less than 50 per cent) will not, in and of itself, cause the amalgamation to be considered a business combination for ABC Co. under the Instrument.

(4) **Consolidation of Securities -** One of the methods that may be used to effect a business combination is a consolidation of an issuer's securities at a ratio that eliminates the entire holdings of most holders of affected securities, through the elimination of post-consolidated fractional interests. Where this or a similar method is used, the security holders whose entire holdings are not eliminated are not considered to be treated identically to the general body of security holders under the Instrument.

(5) **Principle of Equal Treatment in Business Combinations -** The Instrument contemplates that a related party of an issuer might not be treated identically to all other security holders in the context of a business combination in which a person other than that related party acquires the issuer. There are provisions in the Instrument, including the minority approval requirement, that are intended to address this circumstance. Despite these provisions, we are of the view that, as a general principle, security holders should be treated equally in the context of a business combination, and that differential treatment is only justified if its benefits to the general body of security holders outweigh the principle of equal treatment. While we will generally rely on an issuer's review and approval process, in combination with the provisions of the Instrument, to achieve fairness for security holders, we may intervene if it appears that differential treatment is not reasonably justified. Giving a security holder preferential treatment in order to obtain that holder's support of the transaction will not normally be considered justifiable.

2.3 Joint Actors in Bids - The definition of joint actor in the Instrument incorporates the interpretation of the term "acting jointly or in concert" in section 1.7 of the NI 62-104, subject to certain qualifications. Among other things, the concept is relevant in determining whether a take-over bid is an insider bid under the Instrument and whether securities acquired by an offeror in a bid can be included in a minority approval vote regarding a second step business combination under section 8.2 of the Instrument. Without limiting the application of the definition, we are of the view that, for a bid, an offeror and an insider may be viewed as joint actors if an agreement, commitment or understanding between the offeror and the insider provides that the insider shall not tender to the bid, or provides the insider with an opportunity not offered to all security holders to maintain or acquire a direct or indirect equity interest in the offeror, the issuer or a material asset of the issuer.

2.4 Direct or Indirect Parties to a Transaction

(1) The Instrument makes references to direct and indirect parties to a transaction in the definition of connected transactions and in subparagraph 8.2(b)(i) regarding minority approval for a second step business combination. For the purposes of the Instrument, a person is considered to be an indirect party if, for example, a direct party to the transaction is a subsidiary entity, nominee or agent of the person. A person is not an indirect party merely because it negotiates or approves the transaction on behalf of a party, holds securities of a party or agrees to support the transaction in the capacity of a security holder of a party.

(2) For the purposes of the Instrument, we does not consider a person to be a direct or indirect party to a business combination solely because the person receives pro rata consideration in its capacity as a security holder of the issuer carrying out the business combination.

2.5 Amalgamations - Under the Instrument, an amalgamation may be a business combination, related party transaction or neither, depending on the circumstances. For example, an amalgamation is a business combination for an issuer if, as a consequence of the amalgamation, holders of equity securities of the issuer become security holders of the amalgamated entity, unless an exception in one of the lettered paragraphs in the definition of business combination applies. An amalgamation is a related party transaction for an issuer rather than a business combination if, for example, a wholly-owned subsidiary entity of the issuer amalgamates with a related party of the issuer, leaving the equity securities of the issuer unaffected.

2.6 Transactions Involving More than One Reporting Issuer - The characterization of a transaction or the availability of a valuation or minority approval exemption under the Instrument must be considered individually for each reporting issuer involved in the transaction. For example, an amalgamation may be a downstream transaction for one party and a business combination for the other, in which case the latter party is the only party to whom the requirements of the Instrument may apply.

2.7 Previous Arm's Length Negotiations Exemption

(1) For the purposes of the formal valuation exemptions based on previous arm's length negotiations in paragraph (c) of subsection 2.4(1) and paragraph (c) of subsection 4.4(1) of the Instrument for insider bids

and business combinations, respectively, the arm's length relationship must be between the selling security holder and all persons that negotiated with the selling security holder.

(2) We note that the previous arm's length negotiations exemption is based on the view that those negotiations can be a substitute for a valuation. An important requirement for the exemption to be available is that the offeror or proponent of the business combination, as the case may be, engages in "reasonable inquiries" to determine whether various circumstances exist. In our view, if this requirement cannot be satisfied through receipt of representations of the parties directly involved or some other suitable method, the offeror or proponent of the transaction is not entitled to rely on this exemption.

2.8 Connected Transactions

(1) "Connected transactions" is a defined term in the Instrument, and reference is made to connected transactions in a number of parts of the Instrument. For example, subparagraph (b)(iii) of section 5.5 of the Instrument requires connected transactions to be aggregated, in certain circumstances, for the purpose of determining the availability of the formal valuation exemption for a related party transaction that is not larger than 25 per cent of the issuer's market capitalization. In other circumstances, it is possible for an issuer to rely on an exemption for each of two or more connected transactions. However, we may intervene if we believe that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the Instrument.

(2) One method of acquiring all the securities of an issuer is through a plan of arrangement or similar process comprised of a series of two or more interrelated steps. The series of steps is the "transaction" for the purposes of the definition of business combination. However, a related party transaction that is carried out in conjunction with a business combination, and that is not simply one of the procedural steps in implementing the acquisition of the affected securities in the business combination, is subject to the Instrument's requirements for related party transactions. This applies where, for example, a related party buys some of the issuer's assets that the acquirer in the business combination does not want.

(3) An agreement, commitment or understanding that a security holder will tender to a bid or vote in favour of a transaction is not, in and of itself, a connected transaction to the bid or to the transaction for purposes of the Instrument.

2.9 Time of Agreement - A number of provisions in the Instrument refer to the time a business combination or related party transaction is agreed to. This should be interpreted as the time the issuer first makes a legally binding commitment to proceed with the transaction, subject to any conditions such as security holder approval. Where the issuer does not technically negotiate the transaction with another party, such as in the case of a share consolidation, the time the transaction is agreed to should be interpreted as the time at which the issuer's board of directors determines to proceed with the transaction, subject to any conditions.

2.10 "Acquire the Issuer" - In some definitions and elsewhere in the Instrument, reference is made to a transaction in which a related party would "directly or indirectly acquire the issuer … through an amalgamation, arrangement or otherwise, whether alone or with joint actors". This refers to the acquisition of all of the issuer, not merely the acquisition of a control position. For example, a related party "acquires" an issuer when it acquires all of the securities of the issuer that it does not already own, even if that related party held a control position in the issuer prior to the transaction.

PART 3 MINORITY APPROVAL

3.1 Meeting Requirement - The definition of minority approval and subsections 4.2(2) and 5.3(2) of the Instrument provide that minority approval, if required, must be obtained at a meeting of holders of affected securities. The issuer may be able to demonstrate that holders of a majority of the securities that would be eligible to be voted at a meeting would vote in favour of the transaction under consideration. In this circumstance, the regulator or the securities regulatory authority will consider granting an exemption under section 9.1 of the Instrument from the requirement to hold a meeting, conditional on security holders being provided with disclosure similar to that which would be available to them if a meeting were held.

3.2 Second Step Business Combination Following an Unsolicited Take-over Bid - Section 8.2 of the Instrument allows the votes attached to securities acquired under a bid to be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if certain conditions are met. One of the conditions is that the security holder that tendered the securities in the bid not receive an advantage in connection with the bid, such as a collateral benefit, that was not available to other security holders. There may be circumstances where this condition could cause difficulty for an offeror who wishes to acquire all of an issuer through a business

combination following a bid that was unsolicited by the issuer. For example, in order to establish that a benefit received by a tendering security holder is not a collateral benefit under the Instrument, the offeror may need the cooperation of an independent committee of the offeree issuer during the bid. This cooperation may not be forthcoming if the bid is unfriendly. In this type of circumstance, the fact that the bid was unsolicited would normally be a factor the regulator or the securities regulatory authority would take into account in considering whether exemptive relief should be granted to allow the securities to be voted.

3.3 Special Circumstances - As the purpose of the Instrument is to ensure fair treatment of minority security holders, abusive minority tactics in a situation involving a minimal minority position may cause the regulator or the securities regulatory authority to grant an exemption from the requirement to obtain minority approval. Where an issuer has more than one class of equity securities, exemptive relief may also be appropriate if the Instrument's requirement of separate minority approval for each class could result in unfairness to security holders who are not interested parties, or if the policy objectives of the Instrument would be accomplished by the exclusion of an interested party's votes in one or more, but not all, of the separate class votes.

PART 4 DISCLOSURE

4.1 Insider Bids - Disclosure – Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form 62-104F1 of NI 62-104 and by Form 62-104F2, appropriately modified. In our view, Form 62-104F2 disclosure would generally include, in addition to Form 62-104F1 disclosure, disclosure for the following items, with necessary modifications, in the context of an insider bid:

1. Item 9 - Reasons for Bid
2. Item 13 - Acceptance of Bid
3. Item 14 - Benefits from Bid
4. Item 16 - Other Benefits
5. Item 17 - Arrangements Between Issuer and Security Holder
6. Item 18 - Previous Purchases and Sales
7. Item 20 - Valuation
8. Item 23 - Previous Distribution
9. Item 24 - Dividend Policy
10. Item 25 - Tax Consequences
11. Item 26 - Expenses of Bid

4.2 Business Combinations and Related Party Transactions - Disclosure - Paragraphs 4.2(3)(a) and 5.3(3)(a) of the Instrument require in the information circulars for a business combination and a related party transaction, respectively, the disclosure required by Form 62-104F2, to the extent applicable and with necessary modifications. In our view, Form 62-104F2 disclosure would generally include disclosure for the following items, with necessary modifications, in the context of those transactions:

1. Item 4 - Consideration
2. Item 9 - Reasons for Bid
3. Item 10 - Trading in Securities to be Acquired
4. Item 11 - Ownership of Securities of Issuer
5. Item 12 - Commitments to Acquire Securities of Issuer
6. Item 13 - Acceptance of Bid
7. Item 14 - Benefits from Bid
8. Item 15 - Material Changes in the Affairs of Issuer
9. Item 16 - Other Benefits
10. Item 17 - Arrangements Between Issuer and Security Holder
11. Item 18 - Previous Purchases and Sales
12. Item 19 - Financial Statements
13. Item 20 - Valuation
14. Item 21 - Securities of Issuer to be Exchanged for Others
15. Item 22 - Approval of Bid
16. Item 23 - Previous Distribution
17. Item 24 - Dividend Policy
18. Item 25 - Tax Consequences
19. Item 26 - Expenses of Bid
20. Item 29 - Other Material Information
21. Item 30 - Solicitations

PART 5 FORMAL VALUATIONS

5.1 General

(1) The Instrument requires formal valuations in a number of circumstances. We are of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of a valuation does not by itself fulfil this requirement.

(2) The disclosure standards for formal valuations in By-laws 29.14 to 29.23 of the Investment Dealers Association of Canada and Appendix A to Standard No. 110 of the Canadian Institute of Chartered Business Valuators each generally represent a reasonable approach to meeting the applicable legal requirements. Specific disclosure standards, however, cannot be construed as a substitute for the professional judgment and responsibility of the valuator and, on occasion, additional disclosure may be necessary.

(3) An issuer that is required to obtain a formal valuation, or the offeree issuer in the case of an insider bid, should work in cooperation with the valuator to ensure that the requirements of the Instrument are satisfied. At the valuator's request, the issuer should promptly furnish the valuator with access to the issuer's management and advisers, and to all material information in the issuer's possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information on which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts, projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions on which it is based, and adjust the information accordingly.

(4) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances. In addition, it is inappropriate for any interested party to exercise or attempt to exercise any influence over a valuator.

(5) Subsection 2.3(2) of the Instrument provides that in the context of an insider bid, an independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to, determine who the valuator will be and supervise the preparation of the formal valuation. Although the subsection also requires the independent committee to use its best efforts to ensure that the valuation is completed and provided to the offeror in a timely manner, we are aware that an independent committee could attempt to use the subsection to delay or impede an insider bid viewed by the committee as unfriendly. In a situation where an offeror is of the view that an independent committee is not acting in a timely manner in having the formal valuation prepared, the offeror may seek relief under section 9.1 of the Instrument from the requirement that the offeror obtain a valuation.

(6) Similarly, in circumstances where an independent committee is of the view that a bid that has been announced will not actually be made or that the bid is not being made in good faith, the independent committee may apply for relief from the requirements of subsection 2.3(2) of the Instrument.

(7) National Policy 48 *Future-Oriented Financial Information* and in Quebec, Regulation Q-11 respecting Future-Oriented Financial Information do not apply to a formal valuation for which financial forecasts and projections are relied on and disclosed.

5.2 Independent Valuators - While, except in certain prescribed situations, the Instrument provides that it is a question of fact as to whether a valuator (which for the purposes of this section includes a person providing a liquidity opinion) is independent, situations have been identified in the past that raise serious concerns for us. These situations, which are set out below, must be assessed for materiality by the board or committee responsible for choosing the valuator, and disclosed in the disclosure document for the transaction. In determining the independence of the valuator from an interested party, relevant factors may include whether

(a) the valuator or an affiliated entity of the valuator has a material financial interest in future business under an agreement, commitment or understanding involving the issuer, the interested party or an associated or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator was first contacted for the purpose of the formal valuation or opinion, the valuator or an affiliated entity of the valuator

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of the interested party, or an associated or affiliated entity of the interested party, other than the issuer,

(ii) had a material involvement in an evaluation, appraisal or review of the financial condition of the issuer, or an associated or affiliated entity of the issuer, if the evaluation, appraisal or review was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iii) acted as a lead or co-lead underwriter of a distribution of securities by the interested party, or acted as a lead or co-lead underwriter of a distribution of securities by the issuer if the retention of the underwriter was carried out at the direction or request of the interested party or paid for by the interested party, other than the issuer in the case of an issuer bid,

(iv) had a material financial interest in a transaction involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in a transaction involving the issuer other than by virtue of performing the services referred to in subparagraph (b)(ii) or (b)(iii), or

(c) the valuator or an affiliated entity of the valuator is

(i) a lead or co-lead lender or manager of a lending syndicate in respect of the transaction in question, or

(ii) a lender of a material amount of indebtedness in a situation where the interested party or the issuer is in financial difficulty, and the transaction would reasonably be expected to have the effect of materially enhancing the lender's position.

PART 6 ROLE OF DIRECTORS

6.1 Role of Directors

(1) Paragraphs 2.2(2)(d), 3.2(d), 4.2(3)(e), 5.2(1)(e) and 5.3(3)(e) of the Instrument require that the disclosure for the applicable transaction include a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer, including any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

(2) An issuer involved in any of the types of transactions regulated by the Instrument should provide sufficient information to security holders to enable them to make an informed decision. Accordingly, the directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations regarding the transaction. A statement that the directors are unable to make or are not making a recommendation regarding the transaction, without detailed reasons, generally would be viewed as insufficient disclosure.

(3) In reaching a conclusion as to the fairness of a transaction, the directors should disclose in reasonable detail the material factors on which their beliefs regarding the transaction are based. Their disclosure should discuss fully the background of deliberations by the directors and any special committee, and any analysis of expert opinions obtained.

(4) The factors that are important in determining the fairness of a transaction to security holders and the weight to be given to those factors in a particular context will vary with the circumstances. Normally, the factors considered should include whether the transaction is subject to minority approval, whether the transaction has been reviewed and approved by a special committee and, if there has been a formal valuation, whether the consideration offered is fair in relation to the valuation conclusion arrived at through the application of the valuation methods considered relevant for the subject matter of the formal valuation. A statement that the directors have no reasonable belief as to the desirability or fairness of the transaction or that the transaction is fair in relation to values arrived at through the application of valuation methods considered relevant, without more, generally would be viewed as insufficient disclosure.

(5) The directors of an issuer involved in a transaction regulated by the Instrument are generally in the best position to assess the formal valuation to be provided to security holders. Accordingly, we are of the view that, in discharging their duty to security holders, the directors should consider the formal valuation and all prior valuations disclosed and discuss them fully in the applicable disclosure document.

(6) To safeguard against the potential for an unfair advantage for an interested party as a result of that party's conflict of interest or informational or other advantage in connection with the proposed transaction, it is good practice for negotiations for a transaction involving an interested party to be carried out by or reviewed and reported upon by a special committee of disinterested directors. Following this practice normally would assist in addressing our interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the Instrument only mandates an independent committee in limited circumstances, we are of the view that it generally would be appropriate for issuers involved in a material transaction to which the Instrument applies to constitute an independent committee of the board of directors for the transaction. Where a formal valuation is involved, we also would encourage an independent committee to select the valuator, supervise the preparation of the valuation and review the disclosure regarding the valuation.

(7) A special committee should, in our view, include only directors who are independent from the interested party. While a special committee may invite non-independent board members and other persons possessing specialized knowledge to meet with, provide information to, and carry out instructions from, the committee, in our view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.

NOTICE AND REQUEST FOR COMMENT

PROPOSED RULE 61-801
IMPLEMENTING MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

Substance and Purpose

Proposed Rule 61-801 *Implementing Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions* (the Proposed Implementing Rule) is a local rule implementing Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101) in Ontario. The Proposed Implementing Rule revokes an Ontario rule that will be replaced by MI 61-101, and also makes consequential amendments to the local Ontario rule which implements National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

Summary

The Proposed Implementing Rule revokes Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*.

The Proposed Implementing Rule also makes consequential amendments to Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The consequential amendments update these rules by substituting a reference to MI 61-101 in place of an earlier reference to Rule 61-501.

Alternatives Considered

None.

Authority

The following provision of the Act provides the Ontario Securities Commission (the Commission) with authority to adopt the Proposed Implementing Rule. Paragraph 143(1)28 authorizes the Commission to make rules to regulate issuer bids, insider bids, going private transactions and related party transactions, including, in clause v, prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders.

Unpublished Studies

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

Anticipated Costs and Benefits

For a summary of the anticipated costs and benefits of MI 61-101, see CSA Notice and Request for Comment regarding MI 61-101.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Implementing Rule. Submissions received by November 23, 2006 will be considered. Submissions should be addressed to the Commission at the following address:

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

If you are not sending your comments by e-mail, please send a compact disc containing your comments in Word.

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

Questions may be referred to:

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

Text of Proposed Rule

The text of the Proposed Implementing Rule follows.

Date: August 25, 2006

ONTARIO SECURITIES COMMISSION
RULE 61-801 IMPLEMENTING
MULTILATERAL INSTRUMENT 61-101
PROTECTION OF MINORITY SHAREHOLDERS IN SPECIAL TRANSACTIONS

1.1 **Rule 61-501 –** Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* is revoked.

1.2 **Rule 71-802** – Section 2.4 of Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by replacing the words "Rule 61-501, *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*" with "MI 61-101 *Protection of Minority Security Holders in Special Transactions*".

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

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 SecuritiesScource (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

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND FORM 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
08/11/2006	49	Abode Mortgage Holdings Corp. - Common Shares	2,800,000.00	28,000,000.00
08/07/2006	1	Aircastle Limited - Common Shares	5,153,840.00	200,000.00
07/04/2006	3	AMADOR GOLD CORP. - Common Shares	13,500.00	50,000.00
08/08/2006	23	Appulse Corporation - Common Shares	429,600.00	2,148,000.00
08/16/2006	40	Benton Resources Corp. - Units	1,012,335.00	1,531,750.00
07/18/2006	39	Big Cat Mining Corp. - Common Shares	1,816,594.00	3,205,000.00
07/21/2006	63	Brett Resources Inc. - Common Shares	2,393,425.00	1,262,438.00
08/04/2006	6	BuildDirect.com Technologies Inc. - Units	7,110,006.20	3,221,821.00
08/08/2006	6	Canadian Sinosun Energy Inc. - Units	2,700,000.00	2,700,000.00
08/11/2006	84	Canadian Spirit Resources Inc. - Units	6,560,000.00	3,200,000.00
08/03/2006	15	Cannasat Therapeutics Inc. - Common Shares	763,000.00	3,815,000.00
08/09/2006	20	CareVest Blended Mortgage Investment Corporation - Preferred Shares	839,026.00	839,026.00
08/09/2006	32	CareVest First Mortgage Investment Corporation - Preferred Shares	1,247,727.00	1,247,727.00
08/09/2006	15	CareVest Second Mortgage Investment Corporation - Preferred Shares	420,484.00	420,484.00
08/11/2006	2	Cascadero Copper Corporation - Units	180,000.00	600,000.00
08/01/2006	16	Cell-Loc Location Technologies Inc. - Units	490,000.00	2,450,000.00
08/11/2006	24	Credit Agricole S.A. - Notes	375,000,000.00	400,000,000.00
08/17/2006	2	Cross Inc. - Common Shares	463,235.85	15,000.00
06/30/2006 to 07/31/2006	2	Davis-Rea Ltd. Balanced Pooled Fund - Units	206,311.38	18,761.59
08/14/2006	43	Eastshore Energy Ltd. - Common Shares	10,583,750.00	8,467,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
08/11/2006	26	Exchange Industrial Income Fund - Debentures	7,000,000.00	7,000,000.00
07/27/2006	1	Firestone Ventures Inc. - Units	500,000.00	1,000,000.00
06/30/2006	1	First Star Resources Inc. - Common Shares	19,500.00	75,000.00
08/15/2006	44	Galway Resources Ltd. - Units	1,831,922.21	2,023,676.00
08/08/2006 to 08/11/2006	16	General Motors Acceptance Corporation of Canada, Limited - Notes	7,635,279.43	7,635,279.43
06/20/2006 to 06/27/2006	1	Global Trader Europe Limited - Special Trust Securities	81.00	N/A
07/31/2006 to 08/04/2006	9	Global Trader Europe Limited - Special Trust Securities	4,279.75	N/A
07/17/2006 to 07/21/2006	4	Global Trader Europe Limited - Special Trust Securities	8,284.00	N/A
07/24/2006 to 07/31/2006	3	Global Trader Europe Limited - Special Trust Securities	5,286.50	N/A
07/10/2006 to 07/14/2006	3	Global Trader Europe Limited - Special Trust Securities	2,568.00	N/A
08/07/2006 to 08/13/2006	16	Global Trader Europe Limited - Special Trust Securities	7,613.00	N/A
08/08/2006	1	Gold Canyon Resources Inc. - Common Shares	16,000.00	50,000.00
08/10/2006	5	Goldeye Explorations Limited - Units	292,999.95	1,953,333.00
07/04/2006	1	Griffiths McBurney L.P. - Limited Partnership Units	89,158,839.29	4,018,750.00
08/10/2006	9	Groupworks Financial Corp. - Common Shares	512,499.90	3,416,666.00
08/08/2006	30	iCo Therapeutics Inc. - Units	632,000.00	632,000.00
08/08/2006	7	IGW Capital Ltd. - Bonds	2,305.00	2,305.00
08/08/2006	7	IGW Investments Ltd. - Preferred Shares	2,305.00	2,305.00
08/11/2006	6	In Depth Resources Ltd. - Common Shares	1,743,750.00	1,395,000.00
08/11/2006	11	In Depth Resources Ltd. - Flow-Through Shares	1,903,500.00	1,269,000.00
06/30/2006	42	InfraReDx Inc. - Preferred Shares	11,662,739.89	1,316,382.00
08/16/2006	41	International Enexco Ltd. - Units	3,942,200.00	346,000.00
08/14/2006	16	International Wayside Gold Mines Ltd. - Units	500,000.00	2,000,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
08/09/2006	52	Jura Energy Corporation - Units	7,497,500.00	15,000,000.00
08/09/2006	1	KBSH Enhanced Income Fund - Units	1,000,000.00	87,252.42
08/04/2006	1	KBSH Private - Canadian Equity Value Fund - Units	75,000.00	7,398.64
08/04/2006	1	KBSH Private - Money Market Fund - Units	2,000,000.00	200,000.00
08/11/2006	1	KERN Energy Partners II, LP - Limited Partnership Units	14,900,000.00	59.60
08/15/2006 to 08/16/2006	55	Ketchum Capital Corporation - Common Shares	499,999.00	499,999.00
08/08/2006	1	Knoll Inc. - Common Shares	1,005,737.00	50,000.00
08/01/2006	1	Man-Glenwod Holdings Limited - Common Shares	382,304,106.00	1,004,583.00
09/29/2004 to 11/01/2005	81	Maypoint Investments Inc - Debentures	9,176,000.00	9,176,000.00
06/01/2006	1	MCAN Performance Strategies - Limited Partnership Units	789,820.00	6,732.76
08/08/2006	3	METCONNEX INC. - Debentures	1,630,424.65	3.00
08/08/2006	2	Metconnex Canada Inc. - Debentures	1,697,306.44	2.00
08/10/2006	1	Nakina Systems Inc. - Preferred Shares	2,260,000.00	5,063,290.00
08/10/2006	4	Nova Uranium Corporation - Common Shares	1,250,000.00	1,000,000.00
07/28/2006	38	Pacific Booker Minerals Inc. - Common Shares	1,662,100.00	500,000.00
08/09/2006	1	Pan American Energy LLC- Argentine Branch - Notes	279,975.00	250,000.00
08/02/2006	37	Peerless Energy Inc. - Flow-Through Shares	8,189,000.00	1,950,000.00
08/04/2006	7	PharmEng International Inc. - Units	1,635,000.00	4,087,500.00
08/02/2006	21	Plato Gold Corp. - Units	400,000.00	4,000,000.00
08/04/2006	2	PNA Group, Inc. - Notes	3,381,000.00	3,000.00
07/14/2006	1	RBS Global Inc./Rexnord Corporation - Notes	1,128,700.00	1,000.00
05/17/2006	22	Ressources Minieres Augyva Inc. - Common Shares	500,000.00	1,000,000.00
07/19/2006	1	Richview Resources Inc. - Common Shares	1,750,000.00	5,000,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
08/10/2006	6	Ripple Lake Diamonds Inc. - Common Shares	40,000.00	80,000.00
06/15/2006	4	Schneider Power Inc. - Flow-Through Shares	3,802,000.08	15,841,667.00
08/04/2006	2	Security Capital Assurance Ltd. - Common Shares	20,937,060.00	900,000.00
08/11/2006	1	Sextant Strategic Opportunities Hedge Fund LP - Units	25,000.00	1,241.40
07/24/2006	1	Shopplex.com Corporation - Common Shares	10,000.00	10,000.00
08/16/2006	1	SMART Trust - Notes	1,299,368.24	1.00
08/17/2006	1	SMART Trust - Notes	3,026,450.78	1.00
08/01/2006	8	Sterling Diversified Fund - Units	1,582,001.27	1,582,001.27
08/01/2006	1	Sterling Growth Fund - Limited Partnership Units	165,118.49	165,118.49
11/21/2005 to 03/28/2006	1	Strait Gold Corporation - Common Shares	100,982.82	544,091.00
06/15/2006	75	Titan Uranium Inc. - Common Shares	5,000,028.60	2,631,594.00
08/15/2006	4	Tm Bioscience Corporation - Debentures	6,240,000.00	6.24
08/10/2006	24	Tristar Oil & Gas Ltd. - Flow-Through Shares	13,198,700.00	1,690,000.00
08/02/2006	2	UR- Energy Inc. - Flow-Through Shares	500,500.00	182,000.00
07/31/2006	89	Vertex Fund - Trust Units	4,391,961.40	110.79
08/15/2006	153	Walton Alliston Investment Corporation - Common Shares	3,189,730.00	318,973.00
08/17/2006	223	Walton Alliston Ontario Limited Partnership 2 - LP Units	10,025,730.00	10,002,573.00
08/10/2006	20	Walton International Group Inc. - Notes	1,160,000.00	N/A
08/14/2006	1	Whiterock Real Estate Investment Trust - Debentures	10,000,000.00	10,000,000.00
07/31/2006	18	Xplore Technologies Corp. - Preferred Shares	1,934,714.00	5,031,768.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Amtelecom Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 18, 2006
Mutual Reliance Review System Receipt dated August 18, 2006
Offering Price and Description:
$15,000,050.00 - 1,153,850 Units Price: $13.00 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
CIBC World Markets Inc.
Sprott Securities Inc.
TD Securities Inc.
Promoter(s):
-
Project #979075

Issuer Name:
Black Diamond Income Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Prospectus dated August 16, 2006
Mutual Reliance Review System Receipt dated August 16, 2006
Offering Price and Description:
$35,000,000.00 - 3,500,000 Units Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Raymond James Ltd.
GMP Securities L.P.
Blackmont Capital Inc.
Canaccord Capital Corporation
Tristone Capital Inc.
Acumen Capital Finance Partners Limited
Promoter(s):
Black Diamond Leasing Inc.
Project #978457

Issuer Name:
Connacher Oil and Gas Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 17, 2006
Mutual Reliance Review System Receipt dated August 17, 2006
Offering Price and Description:
$26,250,000.00 - 5,000,000 Flow-Through Shares
Price: $ 5.25 per Flow-Through Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
D&D Securities Company
Jennings Capital Inc.
Raymond James Ltd.
Bolder Investment Partners Ltd.
Octagon Capital Corporation
Orion Securities Inc.
Promoter(s):
-
Project #978867

Issuer Name:
Kingsmill Capital Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated August 16, 2006
Mutual Reliance Review System Receipt dated August 17, 2006
Offering Price and Description:
$300,000.00 - 2,000,000 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Jones, Gable & Company Limited
Promoter(s):
David Mitchell
Project #978699

Issuer Name:
Mitec Telecom Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated August 18, 2006
Mutual Reliance Review System Receipt dated August 21, 2006
Offering Price and Description:
$ * - * rights to purchase * Common Shares at a price of $ * per Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #979486

Issuer Name:
Navaho Networks Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated August 18, 2006
Mutual Reliance Review System Receipt dated August 22, 2006
Offering Price and Description:
Maximum Offering $ * - * Units; Minimum Offering $ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Promoter(s):
Mark Itwaru
Vincent McLeod
Project #979868

Issuer Name:
Nickel Asia Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated August 15, 2006
Mutual Reliance Review System Receipt dated August 16, 2006
Offering Price and Description:
$ * - * Class A Non-Voting Shares Price: $ * per Class A Non-Voting Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
Manuel B. Zamora
Salvador B. Zamora II
Project #977909

Issuer Name:
The Data Group Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 15, 2006
Mutual Reliance Review System Receipt dated August 16, 2006
Offering Price and Description:
$53,675,000.00 - 5,650,000 Subscription Receipts, each representing the right to receive one Unit; (2) $35,000,000.00 - 6.75% Extendible Convertible Unsecured Subordinated Debentures - Price: $9.50 per Subscription Receipt, Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
Data Business Forms Limited
Project #978078

Issuer Name:
Deepwell Energy Services Trust
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated August 18, 2006
Mutual Reliance Review System Receipt dated August 21, 2006
Offering Price and Description:
$40,000,000.00 - 4,000,000 Units Price at $10.00 per Units
Underwriter(s) or Distributor(s):
Raymond James Ltd.
CIBC World Markets Inc.
FirstEnergy Capital Corp.
Promoter(s):
-
Project #966512

Issuer Name:
Drive Products Income Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated August 16, 2006
Mutual Reliance Review System Receipt dated August 17, 2006
Offering Price and Description:
$70,000,000.00 - 7,000,000 Units PRICE: $10.00 PER UNIT
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
Gregory Edmonds
Russell Bilyk
Project #963449

Issuer Name:
Duke Energy Income Fund
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated August 15, 2006
Mutual Reliance Review System Receipt dated August 17, 2006
Offering Price and Description:
$108,754,650.00 - 8,951,000 Subscription Receipts, each representing the right to receive one Unit Price: $12.15 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Clarus Securities Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #972361

Issuer Name:
Horizons Mondiale Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated August 17, 2006
Mutual Reliance Review System Receipt dated August 22, 2006
Offering Price and Description:
Series A Units and Series F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #963051

Issuer Name:
NewWest Gold Corporation
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated August 18, 2006
Mutual Reliance Review System Receipt dated August 21, 2006
Offering Price and Description:
CDN$20,500,000.00 - 8,200,000 COMMON SHARES CDN$2.50 PER SHARE
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
GMP Securities L.P.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #953974

Issuer Name:
USC Family Group Education Savings Plan
USC Horizon Education Savings Plan
USC Family Single Student Education Savings Plan
USC Family Multiple Student Education Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Prospectuses dated August 9, 2006
Mutual Reliance Review System Receipt dated August 18, 2006
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
The International Scholarship Foundation
Project #954499, 954492,954496,954498

Issuer Name:
Venturelink Brighter Future Fund Inc .
(formerly Venturelink Brighter Future (Equity) Fund Inc. and Venturelink Fund Inc .)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated August 10, 2006 to the Prospectus dated August 26, 2005
Mutual Reliance Review System Receipt dated August 22, 2006
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Skylon Advisors Inc.
Project #811458

Issuer Name:
Teck Cominco Limited
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated August 15th, 2006
Withdrawn on August 16th, 2006
Offering Price and Description:
C$5,725,000,000.00 - * Class B Subordinate Voting Shares
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Merrill Lynch Canada Inc.
TD Securities Inc.
CIBC World Markets Inc.
Promoter(s):
-
Project #977634

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Name	**From:** Enskilda Securities Inc **To:** SEB Enskilda, Inc.	International Dealer	June 2, 2006
New Registration	Bearbeech Capital Partners Corp.	Limited Market Dealer	August 17, 2006
New Registration	Brockhouse Cooper Gestion D'Actifs Inc. / Brockhouse Cooper Asset Management Inc.	Extra-Provincial Limited Market Dealer and Investment Counsel & Portfolio Manager	August 17, 2006
New Registration	Progressive Wealth Management	Investment Dealer	August 21, 2006
New Registration	Allegiance Investment Management, LLC	International Adviser (Investment Counsel and Portfolio Manager)	August 22, 2006

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 CDS Rule Amendment Notice – Technical Amendments to CDS Application for Participation – ACT

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")

TECHNICAL AMENDMENTS TO CDS APPLICATION FOR PARTICIPATION

AUTOMATED CONFIRMATION TRANSACTION SERVICE

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

CDS has proposed rule amendments that will create a new category of participants for the purpose of accessing the Automated Confirmation Transaction service ("ACT"). To facilitate the application process for prospective ACT participants, CDS has proposed amendments to its Application for Participation.

The Application for Participation marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdshome.nsf/Main-E?OpenFrameSet

Description of Proposed Amendments

The proposed amendments update the instructions for completing the Application for Participation for the new limited purpose participant category "ACT Participant". Checkboxes have been added as appropriate to various schedules to the Application for Participation to indicate the selections for the ACT service.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments related to ACT proposed pursuant to this Notice are considered technical amendments as they are consequential amendments intended to implement a material rule that has been published for comment pursuant to the "Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC" and only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule.

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as varied and restated, these amendments will be effective on August 24, 2006.

D. QUESTIONS

Questions regarding this notice may be directed to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-365-3876
Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY
Chief Legal Officer

13.1.2 IDA Proposed New Methodology for Margining Equity Securities - Regulation 100 and Form 1

INVESTMENT DEALERS ASSOCIATION OF CANADA

PROPOSED NEW METHODOLOGY FOR MARGINING EQUITY SECURITIES
REGULATION 100 AND FORM 1

BOARD RESOLUTION

THE BOARD OF DIRECTORS of the Investment Dealers Association of Canada hereby makes the following amendments to the By-laws, Regulations, Forms and Policies of the Association:

1. Regulation 100.2(a)(v) is repealed and replaced as follows:

"(v) Commercial and corporate bonds, debentures and notes (not in default) and non-negotiable and non-transferable trust company and mortgage loan company obligations registered in the Member's name maturing:

within 1 year	3% of market value (*)
over 1 year to 3 years	6% of market value (*)
over 3 years to 7 years	7% of market value (*)
over 7 years to 11 years	10% or market value (*)
over 11 years	10% of market value (*)

(1) If convertible and selling over par, the margin required shall be the lesser of:

(a) the sum of:

(i) the above rates multiplied by par value; and

(ii) the excess of market value over par value;

and

(b) the maximum margin requirement for a convertible security calculated pursuant to Regulation 100.21.

(2) If convertible and selling at or below par, the margin required shall be the above rates multiplied by market value.

(3) If selling at 50% of par value or less and if rated "B" or lower by either Canadian Bond Rating Service or Dominion Bond Rating Service, the margin requirement shall be 50% of market value.

(4) In the case of U.S. pay securities if selling at 50% of par value or less and if rated "B" or lower by either Moody's or Standard & Poor's, the margin requirement shall be 50% of market value.

(5) If convertible and a residual debt instrument (zero coupon), the margin requirement shall be the lesser of:

(a) the greater of:

(i) the margin requirement for a convertible debt instrument calculated pursuant to this Regulation 100.2(a)(v); and

(ii) the margin requirement for a residual debt instrument (zero coupon) instrument calculated pursuant to Regulation 100.2(a)(xi);

and

(b) the maximum margin requirement for a convertible security calculated pursuant to Regulation 100.21.

(6) Where such commercial and corporate bonds, debentures and notes are obligations of companies whose notes are acceptable notes as defined in Regulation 100.2(a)(vi) then the margin requirements in such Regulation shall apply."

2. Regulation 100.2(a)(xi) is amended by:

(a) Replacing the word "For" with the word "for" at the beginning of subparagraphs (A) and (B);

(b) Replacing the word "The" with the word "the" at the beginning of the last paragraph in the section; and

(c) Removing the reference to paragraph (6) of Regulation 100.2(a)(v).

3. Regulation 100.2(f) is repealed and replaced as follows:

"(f) **Stocks**

(i) **Listed on ~~an~~a recognized exchange in Canada or the United States**

For positions in securities listed (other than bonds and debentures but including rights and warrants other than Canadian bank warrants) on any recognized stock exchange in Canada or the United States:

Long positions - margin required

The published long position basic margin rate for the security as approved by a recognized self-regulatory organization, multiplied by the market value of the security position.

Positions in securities listed on markets or market tiers with initial or ongoing financial listing requirements that do not include adequate minimum pre-tax profit, net tangible asset and working capital requirements, as determined by the Association from time to time, may not be carried on margin.

Short positions - credit required

The greater of:

(A) 100% plus the published short position basic margin rate percentage for the security as approved by a recognized self-regulatory organization, multiplied by the market value of the security position

and

(B) Where the security is trading at less than $2.00 per share, the calculated minimum price based requirement as follows:

Securities selling at $1.50 to $1.99 - $3.00 per share

Securities selling at $0.25 to $1.49 - 200% of market value

Securities selling at less than $0.25 - market value plus $0.25 per share

For the purposes of Regulation 100, the term "basic margin rate" means a customized security specific margin rate calculated based on the measured price and liquidity risk for the security. Similar to the calculation of the "floating margin rate" for index products, measured price risk is based on the maximum standard deviation of percentage changes in daily closing prices over the most recent 20, 90 and 260 trading days. Measured liquidity risk is based on the security's public float value and average daily volume levels. The risk assessments are combined into an overall market risk assessment and, based on that assessment, one of the following margin rates is assigned:

- 15% (only Member firm account positions are eligible);
- 20% (only customer account positions, where a related option or future is listed on an exchange, and Member firm account positions are eligible);

- 25%, 30%, 40%, 60%, 75% and 100%
- 150% (where necessary for short security positions)

(ii) **Index constituent securities listed on certain other exchanges**

For positions in securities (other than bonds and debentures but including warrants and rights), 50% of market value provided:

(A) the exchange on which the security is listed is included on the list of exchanges and associations that qualify as "recognized exchanges and associations" for the purposes of determining "regulated entities"; and

(B) the security is a constituent security on the exchange's major broadly based index.

(iii) **Warrants issued by a Canadian chartered bank**

For positions in warrants issued by a Canadian chartered bank which entitle the holder to purchase securities issued by the Government of Canada or any province (other than firm positions to which Regulation 100.12(ed) applies) the margin shall be the greater of:

(A) the margin otherwise required by this Regulation according to the published basic margin rate for the warrant; or

(B) 100% of the margin required in respect of the security to which the holder of the warrant is entitled upon exercise of the warrant; provided that in the case of a long position the amount of margin need not exceed the market value of the warrant.

(iv) **Unlisted securities eligible for margin**[18]

Subject to the existence of an ascertainable market among brokers or dealers, for positions in the following unlisted securities:

(A) Securities of insurance companies licensed to do business in Canada;

(B) Securities of Canadian banks;

(C) Securities of Canadian trust companies;

(D) Securities of mutual funds qualified by prospectus for sale in any province of Canada, with the exception of money market mutual funds (as defined in National Instrument 81-102) which may be margined using a rate of 5%;

(E) Other senior securities of listed companies;

(F) Securities which qualify as legal for investment by Canadian life insurance companies, without recourse to the basket clause;

(G) Unlisted securities in respect of which application has been made to list on a recognized stock exchange in Canada and approval has been given subject to the filing of documents and production of evidence of satisfactory distribution may be carried on margin for a period not exceeding 90 days from the date of such approval;

~~(H) All securities listed on The Nasdaq Stock Market℠ (Nasdaq National Market® and The Nasdaq SmallCap Market℠).~~

the margin or credit required shall be determined based on the published basic margin rate for the most junior listed security of the same issuer company as approved by a recognized self-regulatory organization, multiplied by the market value of the security position. Where a published rate is unavailable, the following requirements will apply:

[18] Wording has been revised to incorporate a rule change awaiting CSA approval that seeks to separately detail the margin requirements for mutual funds in new IDA Regulation 100.2(l)

Long positions - margin required

Securities selling at $2.00 or more - 50% of market value

Securities selling at $1.75 to $1.99 - 60% of market value

Securities selling at $1.50 to $1.74 - 80% of market value

Securities selling under $1.50 may not be carried on margin.

Short positions - credit required

Securities selling at $2.00 or more - 150% of market value

Securities selling at $1.50 to $1.99 - $3.00 per share

Securities selling at $0.25 to $1.49 - 200% of market value

Securities selling at less than $0.25 - market value plus $0.25 per share

(v) **Other unlisted stocks**

For positions in all other unlisted stocks not mentioned above:

Long positions - margin required

100% of market value

Short positions - credit required

Securities selling at $0.50 or more - 200% of market value

Securities selling at less than $0.50 - market value plus $0.50 per share

(vi) **Index participation units and qualifying baskets of index securities**

(A) For index participation units:

(I) In the case of a long position, the floating margin rate percentage (calculated for the index participation unit based on its regulatory margin interval) multiplied by the market value of the index participation units;

(II) In the case of a short position, 100% plus the floating margin rate percentage (calculated for the index participation unit based on its regulatory margin interval) multiplied by the market value of the index participation units;

(B) For a qualifying basket of index securities:

(I) In the case of a long position, the floating margin rate percentage (calculated for a perfect basket of index securities based on its regulatory margin interval), plus the calculated incremental basket margin rate for the qualifying basket of index securities, multiplied by the market value of the qualifying basket of index securities;

(II) In the case of a short position, 100% plus the floating margin rate percentage (calculated for a perfect basket of index securities based on its regulatory margin interval), plus the calculated incremental basket margin rate for the qualifying basket of index securities, multiplied by the market value of the qualifying basket of index securities;

For the purposes of this subparagraph, the definitions in Regulation 100.9(c)(x), Regulation 100.9(c)(xii), Regulation 100.9(c)(xx) and Regulation 100.9(c)(xxiv) apply."

4. Proposed Regulation 100.2(l) is repealed.

5. Regulation 100.5 is amended by:

   (a) Repealing subparagraph 100.5(a)(vii); and

   (b) Throughout the remainder of the regulation, replacing the words “normal new issue margin” with the words “normal margin”.

6. Regulation 100.12 is amended by:

   (a) Repealing subparagraph 100.12(a);

   (b) Renumbering subparagraph 100.12(b) to 100.12(a);

   (c) Replacing subparagraph 100.12(c) with renumbered 100.12(b) as follows:

   “(b) **Floating rate preferred shares**

   (i) 50% of the margin rate that applies to the related junior security of the issuer multiplied by the market value of the floating rate preferred shares;

   (ii) If the floating rate preferred shares are selling over par and are convertible into other securities of the issuer, the margin required shall be the lesser of:

   (A) the sum of:

   (I) the effective rate determined in Regulation 100.12(b)(i) multiplied by par value; and

   (II) the excess of market value over par value;
   and

   (B) the maximum margin requirement for a convertible security calculated pursuant to Regulation 100.21.

   (iii) 50%, if the issuer of the shares is in default of the payment of any dividend on the shares, in which case the foregoing clauses shall not apply.

   For the purposes of this Regulation 100.12(b), the term "floating rate preferred share" means a special or preferred share described in paragraphs (i)~~,~~ or (~~ii) and (iii~~iv) of Regulation 100.2(f), by the terms of which the rate of dividend fluctuates at least quarterly in tandem with a prescribed short term interest rate.”

   (d) Renumbering subparagraphs 100.12(d) and 100.12(e) to 100.12(c) and 100.12(d) respectively;

   (e) Repealing subparagraphs 100.12(f) and 100.12(g) ; and

   (f) Renumbering subparagraph 100.12(h) to 100.12(e), replacing the title “Government of Canada debt covered by futures” with the title “Debt and equity security offsets with futures and forwards” and replacing within the subparagraph the word “TSE” with the words “Toronto Stock Exchange”.

7. Line 7 of Schedule 2 of Form 1 and the accompanying notes to Line 7 are repealed and the remaining lines and notes and renumbered accordingly.

PASSED AND ENACTED BY THE Board of Directors this 26th day of October 2005, to be effective on a date to be determined by Association staff.

Chapter 25

Other Information

25.1 Consents

25.1.1 Imperial Plastech Inc. - s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am.
Business Corporations Act (British Columbia), S.B.C. 2002, c. 57, as am.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
ONT. REG. 289/00, AS AMENDED
(THE REGULATION)
MADE UNDER
THE BUSINESS CORPORATIONS ACT,
R.S.O. 1990, c.B.16, AS AMENDED (THE OBCA)

AND

IN THE MATTER OF
IMPERIAL PLASTECH INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Imperial PlasTech Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) requesting consent (the **Request**) from the Commission for the Applicant to continue in another jurisdiction, as required by subsection 4(b) of the Regulation;

AND UPON considering the Request and the recommendation of the Staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the OBCA on October 11, 1984. Its head office is located at Three Bentall Centre, Suite 3123, 595 Burrard Street, Vancouver, British Columbia, V7X 1J1.

2. The authorized share capital of the Applicant consists of an unlimited number of common shares without par value and an unlimited number of preference shares without par value. As at July 24, 2006, there were 115,001,396 common shares (the **Shares**) issued and outstanding and no preference shares were issued and outstanding.

3. All of the issued and outstanding Shares of the Applicant are listed for trading on the NEX board of the TSX Venture Exchange under the symbol "IPG.H".

4. The Applicant intends to apply (the **Application for Continuance**) to the Director under the OBCA for authorization to continue (the **Continuance**) under the *Business Corporations Act* (British Columbia) (**BCBCA**). Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, its Application for Continuance must be accompanied by a consent from the Commission.

5. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**). The Applicant is also a reporting issuer or its equivalent under the securities legislation of the provinces of British Columbia and Alberta (the **Legislation**).

6. The Applicant intends to remain a reporting issuer under the Act and the Legislation after the Continuance.

7. The Applicant is not in default of any of the provisions of the Act or the regulations or rules made thereunder and is not in default under the Legislation of any other jurisdiction where it is a reporting issuer or its equivalent.

8. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, any pending proceeding under the Act.

9. The Applicant's shareholders authorized the continuance of the Applicant as a corporation under the BCBCA by special resolution at the annual and special meeting of shareholders held on July 12, 2006 (the **Meeting**). The special resolution authorizing the Continuance was approved at the Meeting by more than 99.99% of the votes cast.

10. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA. A summary of differences between the BCBCA and the OBCA was provided to shareholders in the Applicant's management information circular for its Meeting.

11. The name "Imperial PlasTech Inc." is not acceptable to the British Columbia Registrar of Companies and accordingly the Applicant must change its name at the time of continuance from the Province of Ontario to the Province of British Columbia.

12. The name "GPJ Ventures Ltd." is acceptable to the British Columbia Registrar of Companies and to the TSX Venture Exchange and was approved by the Applicant's shareholders at the Meeting.

13. The Continuance was proposed because the Applicant's head office and management are now located in British Columbia and it would be more expedient and cost effective to have the Applicant continue into the Province of British Columbia.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant under the name "GPJ Ventures Ltd." as a corporation under the BCBCA.

DATED August 11th , 2006

"David L. Knight"

"Paul K. Bates"

25.2 Exemptions

25.2.1 Metalore Resources Limited - s. 6.1 of OSC Rule 13-502 Fees

Headnote

Issuer exempt from paying portion of late fee in connection with late filing of financial statements.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am.

Rules Cited

Ontario Securities Commission Rule 13-501 Fees.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, C.S.5, AS AMENDED
AND
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES (the Fee Rule)

AND

IN THE MATTER OF
METALORE RESOURCES LIMITED

EXEMPTION
(Section 6.1 of the Fee Rule)

WHEREAS the Director has received an application from Metalore Resources Limited (the Applicant) for a decision pursuant to section 6.1 of the Fee Rule, exempting the Applicant from the requirement to pay a portion of a late fee (the Late Fee) required by Appendix C to the Fee Rule;

AND UPON considering the Application and the recommendation of the staff of the Ontario Securities Commission;

AND WHEREAS the Applicant has represented to the Director that:

1. The Applicant is incorporated under the laws of the Province of Ontario and maintains its registered and head office in Vittoria, Ontario.

2. The Applicant is a reporting issuer in Ontario and is currently not in default under any provision of the Act or the rules and regulations made under the Act, except for failing to pay a portion of the Late Fee.

3. The Applicant's common shares are listed on the Toronto Stock Exchange (the TSX) and the Applicant is not in default of any requirements of the TSX.

4. Under section 4.2 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), the Applicant was required to file its annual audited financial statement within 90 days of March 31, 2006 (the 2006 Annual Statements).

5. The Applicant did not file the 2006 Annual Statements within the timeframe required by NI 51-102 due to unique circumstances.

6. Pursuant to Appendix C of the Fees Rules, the Applicant is required to pay a late fee in respect of the late filing of the 2006 Annual Statements.

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

IT IS THE DECISION of the Director, pursuant to section 6.1 of the Fee Rule, that the Applicant is exempt from paying $1,078 of the Late Fee incurred in connection with late filing of the 2006 Annual Statements, provided that the Applicant pays the remaining portion of the Late Fee.

DATED at Toronto on this 18th day of August, 2006.

"Iva Vranic"
Manager, Corporate Finance

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