

Notice

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

November 16, 2007

Introduction

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

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

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

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

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

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

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

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

Background

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

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

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

Acting jointly or in concert

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

Restrictions on varying bids

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

Collateral benefits

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

Private agreement exemption

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

Filing agreements

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

Restrictions on acquisitions during take-over bid

Section 2.2 of MI 62-104 clarifies that an offeror wishing to rely on the exception to the restriction on acquisitions during a take-over bid must have, on the date of the bid, an intention to make purchases during the bid and must state that intention in the bid circular. We have further amended paragraph 2.2(3)(a) to provide a process for an offeror who does not have, on the date of the bid, an intention to make purchases, to later change its intention and make purchases.

Foreign take-over bid and issuer bid exemption

We have revised the disclosure required to rely on the foreign take-over bid or foreign issuer bid exemption to require that non-English bid materials that are sent to Canadian security holders must be accompanied by a brief summary of the key terms of the bid prepared in English, and in Quebec in French or French and English. Further, where bid materials are not sent to security holders generally but a notice or advertisement of the bid is published in the jurisdiction where the offeree issuer is incorporated or organized, paragraphs 4.4(g) and 4.10(g) of MI 62-104 require that an advertisement be published in the relevant jurisdiction of Canada in at least one major daily newspaper specifying where and how security holders may obtain a copy of, or access to, the bid documents.

Summary of Written Comments Received by the CSA

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

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

Consequential amendments

National Amendments

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

Local Amendments

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

Questions

Please refer your questions to any of:

Cathy Watkins
Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 297-4973
cathy.watkins@seccom.ab.ca

Michael Wright
Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 297-4965
michael.wright@seccom.ab.ca

Rosetta Gagliardi
Conseillère en réglementation
Autorité des marchés financiers
(514) 395-0337 ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Marguerite Goraczko
Senior Legal Counsel and Analyst, Capital Markets
Autorité des marchés financiers
(514) 395-0337 ext 4428
Marguerite.Goraczko@lautorite.qc.ca

Dean Murrison
Deputy Director, Legal/Registration
Securities Division
Saskatchewan Financial Services Commission
(306) 787-5879
dmurrison@sfsc.gov.sk.ca

Gordon Smith
Senior Legal Counsel
Legal Services, Corporate Finance
British Columbia Securities Commission
(604) 899-6656
gsmith@bcsc.bc.ca