

Annex A

Proposed National Instrument 62-105 *Security Holder Rights Plans*

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. (1) In this Instrument

“adoption” means the adoption of a rights plan, or an amendment to a rights plan, by an issuer by resolution of the board of directors of the issuer;

“equity security” means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets;

“formal take-over bid”,

(a) in a jurisdiction other than Ontario, means a take-over bid that is subject to Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*,

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

“issuer” means an issuer that is a reporting issuer in a jurisdiction of Canada;

“offeror” means any of the following:

(a) a person or company making a take-over bid or that has announced an intention to make a take-over bid;

(b) a person or company acting jointly or in concert with a person or company referred to in paragraph (a);

(c) a control person of a person or company referred to in paragraph (a);

(d) a person or company acting jointly or in concert with the control person referred to in paragraph (c);

“rights plan” means, for an issuer, an agreement or plan providing for the distribution of rights to security holders of the issuer entitling security holders of the issuer, other than the person or company triggering the agreement or plan, to purchase or acquire additional equity or voting securities of the issuer at a substantial discount to the market price of such securities in the event of an acquisition by a person or company of a specified number or percentage of the issuer’s outstanding equity or voting securities, or in the event of one or more other events triggering the agreement or plan;

“security holder approval” in respect of a rights plan means, subject to section 6, approval by a majority of votes cast by security holders of every class of equity or voting securities of the issuer subject to the rights plan, in each case voting separately as a class, at a meeting of holders of that class, excluding votes cast at the meeting by an offeror in respect of the issuer;

“take-over bid” has the meaning ascribed to that term

(a) in a jurisdiction other than Ontario, in section 1.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*,

(b) in Ontario, subsection 89(1) of the *Securities Act* (Ontario).

(2) For the purposes of this Instrument, the date that a take-over bid is commenced is determined,

(a) in a jurisdiction other than Ontario, in accordance with section 2.9 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*, or

(b) in Ontario, in accordance with section 94.1 of the *Securities Act* (Ontario).

PART 2 EFFECTIVENESS OF RIGHTS PLAN

Requirements

2. (1) An issuer must not distribute a security pursuant to the exercise of a right issued under a rights plan unless

(a) the issuer obtained security holder approval of the rights plan, or a material amendment to the rights plan, on or before the 90th day following the adoption of the rights plan or the material amendment to the rights plan, or

(b) if the rights plan or a material amendment to the rights plan was adopted after one or more take-over bids were announced or commenced, the issuer obtained security holder approval of the rights plan, or the material amendment to the rights plan, on or before the earlier of

(i) the 90th day following the earliest date on which any one of those take-over bids was commenced, and

(ii) the 90th day following adoption of the rights plan or the material amendment to the rights plan.

- (2) Despite an issuer having obtained security holder approval of a rights plan, or a material amendment to a rights plan, as specified in subsection (1), the issuer must not, following the issuer's annual meeting of security holders held in each financial year of the issuer that is after the financial year in which the issuer first obtained security holder approval of the rights plan, distribute a security pursuant to the exercise of a right issued under the rights plan unless the issuer has obtained security holder approval of the rights plan, including any material amendment, at that annual meeting of security holders.
- (3) If, pursuant to section 5, an issuer is not subject to paragraph (1)(a), the issuer must not, following the issuer's annual meeting of security holders held in each financial year of the issuer that is after the financial year during which the issuer first became a reporting issuer in any jurisdiction of Canada, distribute a security pursuant to the exercise of a right issued under the rights plan unless the issuer has obtained security holder approval of the rights plan, including any material amendment, at such annual meeting of security holders.
- (4) Despite subsection (1), an issuer may distribute a security pursuant to the exercise of a right distributed under a rights plan of the issuer during the period commencing on the date of adoption of the rights plan or a material amendment to the rights plan and ending on the earlier of
 - (a) the date of the meeting of security holders during which the issuer sought, but failed to obtain, security holder approval of the rights plan or the material amendment to the rights plan, and
 - (b) the date when security holder approval of the rights plan or the material amendment to the rights plan is required under subsection (1).
- (5) An issuer must not distribute a security pursuant to the exercise of a right issued under a rights plan if security holder approval is obtained to terminate the rights plan.
- (6) If an issuer adopts a rights plan, or makes a material amendment to a rights plan, the issuer must
 - (a) promptly issue and file a news release containing the following:
 - (i) an explanation as to why the issuer adopted the rights plan or the material amendment to the rights plan, including whether or not the rights plan or material amendment to the rights plan was adopted in response to a specific proposal to acquire equity or voting securities of the issuer or a take-over bid that is anticipated or has been proposed, announced or commenced,

- (ii) a description of the principal terms of the rights plan or of the material amendment to the rights plan, including any terms that would be relevant to a security holder's decision to approve or reject the rights plan,
 - (iii) a statement about whether any existing security holder is treated differently, or has different rights or obligations, from any other security holder under the terms of the rights plan and the reason for those differences,
 - (iv) if a rights plan permits an acquisition of ownership or control of equity or voting securities by a person or company on specified terms or conditions without triggering any differential treatment of the rights held by such person or company under the rights plan, disclosure of that fact, of the specified terms or conditions, and of the reason those terms or conditions were included in the plan,
 - (v) a statement about whether independent directors of the issuer reviewed the rights plan to determine whether the rights plan is in the best interests of the issuer and its security holders and, if not, the reasons for not conducting a review,
 - (vi) a discussion of whether the rights plan is in the best interests of the issuer and its security holders,
 - (vii) an explanation that the issuer's security holders must approve the rights plan, or a material amendment to the rights plan, and may terminate a rights plan, in each case in accordance with this Instrument,
 - (viii) information as to when the issuer expects to hold a meeting at which security holders may vote on the rights plan or material amendment to the rights plan and which security holders' votes will be excluded for the purposes of determining whether security holder approval has been obtained, and
 - (ix) any other material information relevant to a security holder's decision to approve or reject the rights plan,
- (b) promptly file the rights plan or any material amendment to the rights plan, and
- (c) include in any information circular required by securities legislation for a shareholders' meeting at which the issuer proposes to obtain security holder approval of the rights plan or any material amendment to the rights plan the disclosure required under paragraph (a).
- (7)** For the purposes of paragraph (6)(a)(v), a director of the issuer is not independent if the director is currently, or has been at any time during the 12 months before the date of the adoption of a rights plan, an officer or employee of the issuer.

Scope of rights plan

3. An issuer must not distribute a security pursuant to the exercise of a right issued under a rights plan other than as a result of a take-over bid or the acquisition by any person or company of securities of the issuer.

Waiver or modification of rights plan

4. If an issuer, in compliance with the terms of a rights plan, waives or modifies the application of the rights plan, or any provision of the rights plan, with respect to a take-over bid, the issuer must grant the same waiver, or make the same modification, with respect to any other take-over bid that was announced or commenced as of the date of the waiver or modification or that is announced or commenced while the first mentioned take-over bid is outstanding.

Exception for new reporting issuers

5. Subsection 2(1) does not apply to an issuer if
 - (a) the rights plan was adopted prior to the issuer becoming a reporting issuer in any jurisdiction of Canada,
 - (b) the disclosure described in paragraph 2(6)(a) was made in a document filed in connection with the issuer becoming a reporting issuer, and
 - (c) the issuer has filed the rights plan.

Exempted security holder

6. If a rights plan of an issuer exempts a security holder from the operation of the rights plan, the security holder approval contemplated by subsections 2(1), (2) or (3), as applicable, must be obtained by
 - (a) a majority vote of security holders of the applicable class excluding the votes cast by the exempted security holder and each person or company acting jointly or in concert with the exempted security holder, and
 - (b) a majority vote of security holders of the applicable class that does not exclude the votes cast by the exempted security holder and each person or company acting jointly or in concert with the exempted security holder.

Restriction on new rights plan following non-approval or termination of a rights plan

7. (1) If an issuer did not obtain security holder approval of a rights plan, or a material amendment to a rights plan, in accordance with subsection 2(1), (2) or (3), as applicable, the issuer must not, during the period commencing on the relevant non-approval date and ending 12 months after the relevant non-approval date, distribute a security pursuant to the exercise of a right issued under a new rights plan, except with prior security holder approval.
- (2) For the purposes of subsection (1), “relevant non-approval date” in respect of a rights plan means
 - (a) if the issuer failed to obtain security holder approval of the rights plan or a material amendment to it at a meeting of security holders, the date of the meeting, and
 - (b) if no meeting was held, the date of the applicable deadline for obtaining security holder approval under subsection 2(1), (2) or (3).
- (3) If security holder approval is obtained to terminate a rights plan of an issuer, the issuer must not distribute a security pursuant to the exercise of a right issued under a new rights plan for at least 12 months thereafter, except with prior security holder approval.
- (4) Subsections (1) and (3) do not apply if a formal take-over bid is subsequently announced or commenced with respect to securities of the issuer and the issuer adopts a rights plan or material amendment to a rights plan after the formal take-over bid has been announced or commenced but prior to its expiry.
- (5) A rights plan adopted in accordance with this section is subject to the provisions of this Instrument.

Prospectus exemption

8. The prospectus requirement does not apply to the distribution by an issuer of a security to a security holder of the issuer pursuant to a rights plan of the issuer or the exercise of rights issued thereunder in accordance with this Instrument.

PART 3 EXEMPTION

Exemption

9. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B to National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 4 COMING INTO FORCE

Transition

- 10. (1)** Other than subsection (2), this Instrument does not apply to an issuer in respect of a rights plan adopted by the issuer on or before **[effective date]**.
- (2) If an issuer adopted a rights plan on or before **[effective date]**, the issuer must not, following the issuer's next annual meeting held 90 days or more after **[effective date]**, distribute a security pursuant to the exercise of a right issued under the rights plan unless the issuer obtains or has obtained security holder approval of the rights plan, including any material amendment, at such annual meeting.

Effective date

- 11.** This Instrument comes into force on **[effective date]**.