

## APPENDIX 5A

# GUIDELINES FOR TAKE-OVER BIDS AND ISSUER BIDS MADE THROUGH THE FACILITIES OF THE EXCHANGE

### 1. Definitions

(1) In these guidelines:

- (a) **“average bid value”** means the amount obtained by dividing:
  - (i) the aggregate of the bid price times the number of shares of the class of securities sought plus the market price times the number of shares of such class of securities not sought, by,
  - (ii) the aggregate of the number of shares of the class of securities sought plus the number of shares of such class of securities not sought;
- (b) **“bid”** means either a stock exchange take-over bid or a substantial issuer bid, as the case may be;
- (c) **“circular bid”** means a take-over bid or issuer bid made in compliance with the requirements of the Securities Laws or, if applicable, Part XVII of the Canada Business Corporations Act;
- (d) **“closing price”** means:
  - (i) the price per share at which the last trade in that class of securities was effected on the Exchange on that day as shown on the record of sales published by the Exchange; or
  - (ii) if there were no trades in that class of securities on the Exchange, the price per share at which the last trade in that class of securities was effected on another exchange recognized for this purpose; or
  - (iii) if there were no trades in that class of securities on the Exchange or any recognized exchange, but closing bid and ask prices were published therefor, the average of such bid and ask prices as shown on the list of closing quotations published by the Exchange;
- (e) **“competing stock exchange take-over bid”** means a stock exchange take-over bid announced while another stock exchange take-over bid for the same class of securities of an offeree issuer is outstanding;

- (f) **“insider bid”** means a stock exchange take-over bid made by an insider of a listed offeree issuer, by any associate or affiliate of an insider of a listed offeree issuer, by any associate or affiliate of a listed offeree issuer or by an offeror acting jointly or in concert with any of the foregoing;
- (g) **“issuer bid”** means an offer to acquire listed securities made by or on behalf of a listed company for securities issued by that listed company, unless:
- (i) the securities are purchased or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or where the securities are purchased to meet sinking fund or purchase fund requirements;
  - (ii) the purchase or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated, organized or continued; or
  - (iii) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to repurchase the securities and the securities are acquired pursuant to the exercise of such right;
- (h) **“last bid”** means the stock exchange take-over bid, notice of which was accepted by the Exchange at the latest point in time;
- (i) **“market price”** means the simple average of the closing price of the shares for each of the twenty trading days preceding the Exchange’s acceptance of the notice in respect of the initial stock exchange take-over bid;
- (j) **“normal course issuer bid”** means an issuer bid where the purchases (other than purchases by way of a substantial issuer bid):
- (i) do not, when aggregated with the total of all other purchases in the preceding 30 days, whether through the facilities of a stock exchange or otherwise, aggregate more than 2% of the securities of that class outstanding on the date of acceptance of the notice of normal course issuer bid by the Exchange; and
  - (ii) over a 12-month period, commencing on the date specified in the notice of normal course issuer bid, do not exceed the greater of
    - (A) 10% of the public float, or
    - (B) 5% of such class of securities issued and outstanding, excluding any held by or on the behalf of the issuer, on the date of acceptance of the notice of normal course issuer bid by the Exchange, whether such purchases are made through the facilities of a stock exchange or otherwise.

- (k) **“normal course purchase”** means a take-over bid made by way of a purchase on the Exchange of such number of a class of securities of a listed offeree issuer that, together with all purchases of such securities made by the offeror and any person acting jointly or in concert with the offeror in the preceding 12 months through the facilities of a stock exchange or otherwise, do not aggregate more than 5% of the securities of that class outstanding at the time such purchase is made;
- (l) **“notice”** means a notice of a stock exchange take-over bid filed in accordance with section 4 of these Guidelines or a notice of stock exchange substantial issuer bid filed in accordance with section 4 of these Guidelines or, if applicable, section 15 of these Guidelines;
- (m) **“principal shareholder”** of a company means a person who beneficially owns or exercises control or direction over more than 10% of the issued and outstanding shares of any class of voting securities or equity securities of the company;
- (n) **“public float”** means the number of shares of the class that are issued and outstanding, less
- (i) the number of shares of the class beneficially owned, or over which control or direction is exercised by:
    - (A) every senior officer or director of the listed company,
    - (B) every principal shareholder of the listed company; and
  - (ii) the number of shares that are pooled, escrowed or non-transferable;
- (o) **“ranking bid”** means the stock exchange take-over bid that yields the highest average bid value;
- (p) **“shares sought”** means the number of shares of the class of securities for which a bid is made;
- (q) **“shares not sought”** means the number of shares outstanding of the class of securities for which the bid is made minus the aggregate of the number of such shares sought and the number of such shares owned directly or indirectly by the offeror, its insiders, associates, affiliates, and any person acting jointly or in concert with the offeror;
- (r) **“stock exchange take-over bid”** means a take-over bid, other than a normal course purchase, made through the facilities of the Exchange;
- (s) **“substantial issuer bid”** means an issuer bid, other than a normal course issuer bid, made through the facilities of the Exchange; and
- (t) **“take-over bid”** means an offer to acquire such number of the listed voting or listed equity securities of an offeree issuer that will in the aggregate constitute

- (i) 20% or more of the outstanding securities of that class, together with the offeror's securities, or
  - (ii) in the case of an offeree issuer that is subject to the Canada Business Corporations Act, 10% or more of the outstanding shares of a class of listed voting shares, together with
    - (A) shares already beneficially owned or controlled, directly or indirectly by the offeror of an affiliate or associate of the offeror, and
    - (B) securities held by such persons that are currently convertible into such shares; and
    - (C) currently exercisable rights and options to acquire such shares or to acquire securities that are convertible into such shares, on the date of the offer to acquire.
- (2) For the purposes of this rule, the terms "affiliate", "associate", "class of securities", "director", "equity security", "insider", "material change", "offer to acquire", "offeree issuer", "offeror", "offeror's securities", "person" and "voting security" shall have the respective meanings assigned to them in the Securities Laws.
- (3) For the purposes of this rule, a purchase shall be deemed to have taken place when the offer to buy or the offer to sell, as the case may be, is accepted.
- (4) For the purposes of this rule,
- (a) the beneficial ownership of securities of an offeror or of any person acting jointly or in concert with the offeror shall be determined in accordance with the applicable Securities Laws; and
  - (b) where any person is deemed by subclause a. to be the beneficial owner of unissued securities, the number of outstanding securities of a class in respect of an offer to acquire shall be determined in accordance with the applicable Securities Laws.
- (5) For the purposes of this rule, whether a person is acting jointly or in concert with an offeror shall be determined in accordance with the applicable Securities Laws.

## 2. Compliance With Exchange Requirements

An offeror shall not make a take-over bid or issuer bid through the facilities of the Exchange except in accordance with these Guidelines and the Exchange's Policies.

**Note:** The term "offeror" includes a person making a take-over bid and an issuer making an issuer bid.

## *General Rules Applicable to Bids*

### **3. Obligations of Offeror**

- (1) (a) An offeror shall not attach any conditions to a stock exchange take-over bid other than:
  - (i) establishing a maximum number of shares sought, which shall be the number of shares the offeror is obliged to take up; and
  - (ii) in the case of a transaction in respect of which notice must be given to the Director of Investigation and Research under the provisions of the Competition Act (Canada), making the bid conditional on no action being taken by the Director under the provisions of such Act within the time period specified in such Act for a transaction effected through the facilities of a stock exchange in Canada.
- (b) An offeror shall not attach any conditions to a substantial issuer bid other than establishing a maximum number of shares sought, which shall be the number of shares the offeror is obliged to take up.
- (2) An offeror shall not take up more than the number of shares sought without the approval of the Exchange.
- (3) (a) A stock exchange take-over bid shall not be withdrawn except
  - (i) pursuant to section 10; or
  - (ii) if the Exchange is satisfied that any undisclosed action prior to the date of the offer or any actions subsequent to that date by the board of directors or senior officers of the offeree issuer or by a person or company other than the offeror, effects an adverse material change in the affairs of the offeree issuer.
- (b) A substantial issuer bid shall not be withdrawn.
- (4) An offeror making a bid shall file a notice with the Exchange, and shall not proceed with the bid until the notice has been accepted by the Exchange.
- (5) Except where otherwise provided, an offeror making a bid shall take the following steps to inform shareholders of the offeree issuer of the terms of the bid forthwith after the Exchange has accepted notice of the bid:
  - (a) disseminate details of the bid to the news media in the form of a press release; and

- (b) communicate the terms of the bid
  - (i) by sending a copy of the notice filed pursuant to section 4 by first class mail to each registered holder of the class of securities that is the subject of the bid in Canada and in each other jurisdiction where the bid is made and such communication is not prohibited by law, and to each such registered holder of securities convertible or exchangeable for such class of securities or that otherwise has a right to participate in the offer, and
  - (ii) by advertising in the manner prescribed by the Exchange, or by such other means as may be approved by the Exchange.
- (6) If an offeror makes or intends to make a bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.
- (7) An offeror filing a notice shall pay a filing fee in such amount as may be prescribed by the Exchange.

#### **4. Notice by Offeror**

- (1) A notice of a stock exchange take-over bid filed by an offeror with the Exchange shall provide the following information in a form acceptable to the Exchange:
  - (a) the identity of the offeree issuer;
  - (b) the class of securities that are the subject of the bid and a description of the rights of the holders of any other class of securities that have a right to participate in the offer by conversion or otherwise;
  - (c) the cash price to be paid per share and the number of shares sought;
  - (d) the terms of the bid, including the date of the book, method of tendering to the bid and settlement of tenders, any commissions to be paid to Members of the Exchange, the names of any person or company retained to make solicitations in respect of the bid, and any other relevant information with respect to such terms;
  - (e) the number and percentage of each class of outstanding equity or voting securities of the offeree issuer owned directly or indirectly by:
    - (i) the offeror;
    - (ii) each of the offeror's directors and senior officers and their associates;

- (iii) any other person acting jointly or in concert with the offeror;
- (iv) where known after reasonable enquiry, any person holding 10% or more of any class of equity or voting securities of the offeror; and
- (v) where known after reasonable enquiry, any person holding 10% or more of any class of equity or voting securities of the offeree issuer;
- (f) where known after reasonable enquiry, the number of each class of equity or voting securities of the offeree issuer traded by each of the persons referred to in subclause e. hereof during the six-month period preceding the date of filing of the notice, including the purchase or sale price and the date of each such transaction;
- (g) details of any commitments made by any of the persons referred to in subclause e. hereof to acquire any equity or voting securities of the offeree issuer (other than pursuant to the bid) and the terms and conditions of such commitments;
- (h) a summary showing in reasonable detail the volume of trading and price range of the securities for which the bid is made in the twelve-month period preceding the date of filing of the notice, on the Exchange and on any other principal market, and the market price of such securities immediately before the announcement of the bid;
- (i) the particulars of any arrangement or agreement made or proposed to be made between the offeror and any of the directors or senior officers of the offeree issuer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or for remaining in or retiring from office if the bid is successful;
- (j) the particulars of any information known to the offeror of any material change in the affairs of the offeree issuer, or any material fact concerning the securities of the offeree issuer that has not been generally disclosed;
- (k) information regarding any plans or proposals of the offeror to liquidate the offeree issuer, to sell, lease or exchange all or substantially all of the assets of the offeree issuer or to amalgamate such issuer with any other company, or to make any other major change in the business, operations, corporate structure, management or personnel of the offeree issuer;
- (l) a statement of any right of appraisal that shareholders of the offeree issuer may have under applicable laws and whether the offeror intends to exercise any right of acquisition it may have under applicable legislation;
- (m) a statement of the rights provided by the Securities Laws;
- (n) a statement to the effect that the bid may only be withdrawn pursuant to clause section 10(2), or in the circumstances referred to in section 3(3);

- (o) information satisfactory to the Exchange regarding the identity and financial resources of the offeror, including:
    - (i) if it is a corporation, the names of its directors, officers and principal shareholders,
    - (ii) if it is a partnership, the names of its partners, and suitable disclosure regarding any corporate partners, and
    - (iii) the source of funds to be used to pay for securities tendered to the bid and the terms of any financing obtained;
  - (p) where a valuation is provided pursuant to a legal requirement or otherwise,
    - (i) a summary of the valuation disclosing the basis of computation, scope of review, relevant factors and their values, and the key assumptions on which the valuation is based, and
    - (ii) where copies of the valuation are available for inspection and a statement that a copy of the valuation will be mailed upon payment of a charge covering copying and postage;
  - (q) details of any important business relationship between the offeror and the offeree issuer; and
  - (r) any other information not disclosed in the foregoing that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid.
- (2) The notice shall conclude with a signed statement certifying that:
- (a) the information provided is complete and accurate, and in compliance with these Guidelines;
  - (b) the contents of the notice and the making of the offer have been authorized by the offeror, and in the case of an offeror that has directors, by its board of directors; and
  - (c) the notice contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it is made.
- (3)
- (a) A notice of a substantial issuer bid filed by an offeror with the Exchange shall provide the information contained in clauses (1) and (2) hereof with appropriate modifications for a transaction that is not a take-over bid; and
  - (b) The notice shall contain such additional information as may be required by the Exchange.



Note: Refer to Exchange Policies for additional requirements.

- (4) A copy of the notice shall be filed with the applicable Securities Commissions and, in the case of a stock exchange take-over bid, with the offeree issuer, forthwith after acceptance by the Exchange.

## **5. Book for Receipt of Tenders**

A book for receipt of tenders to the bid shall be opened on the Exchange not sooner than the twenty-first calendar day after the date on which notice of the bid is accepted by the Exchange and at such time, and for such length of time, as may be determined by the Exchange.

## **6. Conduct of Members**

In respect of a bid:

- (a) no Member shall knowingly assist or participate in the tendering of more shares than are owned by the tendering party; and
- (b) tendering, trading and settlement by Members shall be in accordance with such rules as the Exchange shall specify to govern each bid.

## **7. Allotment Procedure**

- (1) Where in a bid more shares are tendered than the number of shares sought, the offeror shall take up a proportion of all shares tendered equal to the number of shares sought divided by the number of shares tendered, and Members shall make allocations in respect of shares tendered in accordance with the instructions of the Exchange.
- (2) As soon after the closing of the book for receipt of tenders as may be possible, the Exchange shall announce the total number of shares acquired by the offeror pursuant to the terms of the bid and the allocation thereof.

## **8. Amendments to Bids and Notices**

- (1) The terms of a bid may only be amended to increase the price per share offered or the number of shares sought or to agree to pay an amount in respect of the seller's commission or a combination thereof. Such amendment shall be made by filing with the Exchange a notice of amendment in a form acceptable to the Exchange.
- (2) Forthwith upon acceptance of the notice of amendment by the Exchange, the offeror shall issue a press release containing a summary of the information set forth in such notice of amendment, including reference to any change in the date of the book. the offeror shall disseminate such notice of amendment in such manner as the Exchange may deem to be appropriate in the circumstances.

- (3) Where the offeror becomes aware of a material change in any of the information contained in the notice in respect of a bid, the offeror shall file with the Exchange forthwith a notice of change in a form acceptable to the Exchange.
- (4) Forthwith upon acceptance of the notice of change by the Exchange, the offeror shall issue a press release containing a summary of the information set forth in such notice of change, including reference to any change in the date of the book. The offeror shall disseminate such notice of change in such manner as the Exchange may deem to be appropriate in the circumstances.

## ***Special Rules Applicable to Stock Exchange Take-Over Bids***

### **9. Offeree Directors' Press Release**

- (1) The board of directors of the offeree issuer shall, within seven trading days of the date of acceptance by the Exchange of the notice of a stock exchange take-over bid, issue a press release recommending acceptance or rejection of the offer and the reasons therefore, or indicating that they are not making a recommendation and the reasons therefor. The press release shall also contain the following information:
  - (a) a summary of any agreement entered into or proposed between the offeree issuer and its senior executives in regard to any payment or other benefit granted as indemnity for the loss of their positions or in regard to their retaining or losing their positions if the bid is accepted; and
  - (b) a summary of any transaction, board resolution, agreement in principle or signed contracts in response to the bid, indicating whether or not the offeree issuer has undertaken any negotiations that relate to or would result in one of the following:
    - (i) an extraordinary transaction such as a merger or reorganization involving the offeree issuer or one of its subsidiaries;
    - (ii) the purchase, sale or transfer of a material amount of assets of the offeree issuer or of one of its subsidiaries;
    - (iii) the acquisition of its own securities by way of an issuer bid or of the securities of another company; or
    - (iv) any material change in the present capitalization or dividend policy of the offeree issuer.

The press release should disclose negotiations underway, without giving details if there has been no agreement in principle.

- (2) A copy of the press release required by clause (1) shall be delivered to the Exchange prior to its release.
- (3) A stock exchange take-over bid may proceed notwithstanding failure by the board of directors of the offeree issuer to comply with the requirements of clause (1).

## 10. Competing Stock Exchange Take-Over Bids

If a competing stock exchange take-over bid is announced, the stock exchange take-over bids shall be governed by the following additional provisions:

- (1) neither the ranking bid nor the last bid may be withdrawn, and the offerors making such bids shall take up and pay for all shares tendered to them, up to the maximum numbers of shares sought by each respectively;
- (2) a bid that is neither the ranking bid nor the last bid may be withdrawn within one clear trading day of the announcement of the last bid; and
- (3) the terms of the ranking bid may not be altered except to increase the average bid value thereof.

## 11. Purchases During a Take-Over Bid

If granted an exemption under section 17 of these Guidelines, an offeror making a stock exchange take-over bid and any person acting jointly or in concert with the offeror may purchase shares that are the subject of the bid through the facilities of the Exchange provided that:

- (1) a press release is issued announcing the offeror's intention to make such purchases;
- (2) such purchases do not begin until the second clear trading day following the date of the issuance of the press release;
- (3) such purchases, together with all purchases of such securities made by the offeror and any person or company acting jointly or in concert with the offeror during the preceding 90 days through the facilities of a stock exchange or otherwise, do not aggregate more than 5% of the securities of that class outstanding at the time such purchases are made;
- (4) the offeror issues and files with the Exchange a press release forthwith after the close of each trading day on which shares are purchased under this subsection disclosing
  - (a) the identity of the purchaser,
  - (b) the number of shares of the offeree issuer purchased that day,
  - (c) the highest price paid per share,
  - (d) the aggregate number of shares of the offeree issuer purchased up to and including that day under this subsection during the currency of the take-over bid,
  - (e) the average price paid for such shares;
  - (f) the total number of shares owned by the purchaser at the time; and

- (5) if the offeror or any person acting jointly or in concert with the offeror pays a price for any such shares that is higher than the price offered pursuant to the stock exchange take-over bid, then the price offered pursuant to the stock exchange take-over bid shall be increased to equal such higher price.

## **12. Notice of Insider Bid**

A notice in respect of an insider bid shall, in addition to the information required by section 4, provide the information required by the Exchange.

Note: Refer to Exchange Policies for details of additional information to be included in the notice.

## **13. Normal Course Purchases**

An offeror making an normal course purchase is not subject to any notice requirement under this rule.

### ***Special Rules Applicable to Substantial Issuer Bids***

## **14. Purchases During a Substantial Issuer Bid**

Notwithstanding any other provision of this rule, an offeror and any person or company acting jointly or in concert with an offeror shall not make any other purchases or agreements or commitments to purchase securities that are the subject of the issuer bid during the course of such bid unless such purchases are permitted by the Exchange.

## **15. Special Procedures for Issuer Bids for Securities That are Neither Equity nor Voting Securities**

- (1) The provisions of this section shall apply to a substantial issuer bid for securities that are neither voting nor equity securities provided that
  - (a) there is no legal or regulatory requirement to provide a valuation of the securities that are the subject of the bid to shareholders; or
  - (b) exemptions from all applicable requirements have been obtained.
- (2) The provisions of subsection 3(5) and sections 4 and 5 shall not apply to a bid made pursuant to this section.
- (3) A notice filed with the Exchange pursuant to this section shall provide the following information in a form acceptable to the Exchange:
  - (a) the name of the offeror;

- (b) the class of securities that are the subject of the bid and a description of the rights of the holders of any other class of securities that have a right to participate in the offer by conversion or otherwise;
  - (c) the cash price to be paid per share and the number of shares sought;
  - (d) the terms of the bid, including the date of the book, method of tendering to the bid and settlement of tenders, any commissions to be paid to Members of the Exchange, the names of any person or company retained to make solicitations in respect of the bid, and any other relevant information with respect to such terms;
  - (e) the purpose or business reasons for the bid;
  - (f) information satisfactory to the Exchange regarding the financial resources of the offeror, including the source of funds to be used to pay for securities tendered to the bid and the terms of any financing obtained;
  - (g) the particulars of any material change in the affairs of the offeror or any material fact concerning the offeror that has not been generally disclosed;
  - (h) a statement of any right of appraisal that security holders may have under applicable laws and whether the offeror intends to exercise any right of acquisition it may have under applicable legislation; and
  - (i) any other information not disclosed in the foregoing that would reasonably be expected to affect the decision of the security holders to accept or reject the bid.
- (4) The notice shall conclude with a signed statement certifying that:
- (a) the information provided is complete and accurate, and in compliance with these Guidelines;
  - (b) the contents of the notice and the making of the offer have been authorized by the board of directors of the offeror; and
  - (c) the notice contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it is made.
- (5) Forthwith after the Exchange has accepted notice of the bid, the offeror shall:
- (a) disseminate details of the bid to the media in the form of a press release; and
  - (b) communicate the terms of the bid by advertising in the manner prescribed by the Exchange, or by such other means as may be approved by the Exchange.
- (6) A book for receipt of tenders to the bid shall be opened on the Exchange not sooner than the twenty-first calendar day after the date on which notice of the bid is accepted by the

Exchange and at such time, and for such length of time, as may be determined by the Exchange.

- (7) In all other respects, the provisions of this rule shall apply to a bid made pursuant to this section.

## 16. Normal Course Issuer Bids

A normal course issuer bid shall be made in accordance with the Exchange's Policy 5.6 - Normal Course Issuer Bids.

## 17. Powers of the Exchange

The Exchange may, subject to such terms and conditions as it may impose:

- (1) require additional disclosure or impose additional obligations on a person proposing to make or making a stock exchange take-over bid, substantial issuer bid, normal course purchase or normal course issuer bid where, in the opinion of the Exchange, it would be beneficial to the public interest to do so;
- (2) determine that any person shall not be permitted to purchase shares through the facilities of the Exchange;
- (3) delay the date upon which the Book, in respect of a stock exchange take-over bid or substantial issuer bid, is to be opened to such date as it may, in its discretion, determine on the occurrence of any of the following:
  - (a) the announcement or making of a competing stock exchange bid or circular bid for securities of the same offeree issuer,
  - (b) the acceptance of a notice of change or a notice of amendment of the terms of the stock exchange take-over bid or of a competing bid or the announcement of a change in the terms of a circular bid for securities of the same offeree issuer, or
  - (c) any other event that, in the opinion of the Exchange, justifies such a delay;
- (4) permit an offeror to extend a stock exchange take-over bid or substantial issuer bid after the announcement referred to in subsection 7(2);
- (5) determine whether a stock exchange take-over bid is the ranking bid;
- (6) deem any transaction made through the facilities of the Exchange to be a stock exchange take-over bid; and
- (7) exempt any person from any Exchange requirements where, in the opinion of the Exchange, it would not be prejudicial to the public interest to do so.

Note: See Policy 5.5 - Stock Exchange Take-Over Bids and Issuer Bids and Policy 5.6 - Normal Course Issuer Bids in the Exchange's Corporate Finance Services Policy Manual.