APPENDIX 5C

OSC COMPANION POLICY 61-501CP

ONTARIO SECURITIES COMMISSION

COMPANION POLICY 61-501CP

TO ONTARIO SECURITIES COMMISSION RULE 61-501

INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS

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PART 1 GENERAL

1.1 General - The Commission regards it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, going private transactions and related party transactions, that all securityholders be treated in a manner that is fair and that is perceived to be fair. In the view of the Commission, issuers and others who benefit from access to the capital markets assume an obligation to treat securityholders 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.

The Commission does not consider that insider bids, issuer bids, going private transactions and related party transactions are inherently unfair. It recognizes, however, that these transactions are capable of being abusive or unfair, and has made Rule 61-501 (the "Rule") to regulate these transactions.

This Policy expresses the Commission's views on certain matters related to the Rule.

PART 2 DEFINITIONS AND INTERPRETATION

2.1 Director - The term "director" is used frequently in the Rule. By virtue of Rule 14-501 Definitions, the term has the meaning in section 1 of the Act. The Commission is of the view that, by virtue of this definition, in appropriate circumstances a director of a general partner in a limited partnership can be considered to be a director of the limited partnership.

2.2 Freely Tradeable - In order for securities to be "freely tradeable" for purposes of the Rule, all hold periods imposed by Ontario securities law must have expired, any period of time under Ontario securities law for which an issuer must be a reporting issuer must have passed and the other conditions of the definition must be met. Securities that can only be distributed under a prospectus or in reliance on a prospectus exemption, including any exemption in Ontario securities law applicable to control person distributions, would not be considered to be freely tradeable.

2.3 Jointly or in Concert

(1) The Act sets out certain circumstances where the presumption will arise that parties are acting jointly or in concert. Paragraph (b) of subsection 1.2(1) of the Rule provides that the term "acting jointly or in concert" has the meaning ascribed to it in section 91 of the Act. The Commission is of the view that, for an insider bid, an offeror and an insider may be viewed as acting jointly or in concert if an agreement, commitment or understanding between an offeror and an insider provides that the insider shall not tender to the offer or provides the insider with an opportunity not offered to all securityholders to maintain or acquire a direct or indirect equity interest in the offeror, the issuer or a material asset of the issuer.

(2) Concern has been expressed that agreements by a shareholder to tender into a proposed take-over bid or to vote in favour of a proposed transaction, which are commonly referred to as lock-up agreements, may result in the selling shareholder being seen to be acting jointly or in concert with an acquiror. While the language of section 91 of the Act is broad, and the particular facts of any case must be considered, the Commission is of the view that an ordinary lock-up agreement with an identically treated shareholder should not in and of itself generally result in arm's length parties being seen to be acting jointly or in concert.

2.4 Issuer Bid

(1) The term "issuer bid" is defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation (in Ontario, subsection 89(1) of the Act). Subject to subsection (2), the Commission is of the view that, by virtue of the provisions of section 92 of the Act, an offer to acquire securities of the issuer made by a wholly-owned subsidiary entity of the issuer would be an issuer bid.

(2) The Commission is of the view that there may be limited circumstances in which a purchase of securities of an issuer made by a wholly-owned subsidiary entity of the issuer may not be an issuer bid. An example of one such situation is where the wholly-owned subsidiary entity of the issuer is a registered dealer and the registered dealer is not acting at the direction of the issuer in making the purchases, e.g., a registered dealer acting in its capacity as an underwriter or agent for a purchaser other than the issuer.

2.5 Director for Purposes of Section 1.3 - Subparagraph (b)(iii) of subsection 1.3(1) of the Rule and subsection 1.3(4) of the Rule require certain letters to be sent to the Director for purposes of satisfying the liquid market test. Those letters should be sent to the Director, Take-over/Issuer Bids, Mergers and Acquisitions, Corporate Finance Branch.

2.6 Going Private Transactions Carried Out in Accordance with Part 4 - Paragraph (c) of subsection 4.3(1) of the Rule provides an exemption from the 40 day delivery requirement in the OBCA if the going private transaction is carried out in accordance with Part 4 of the Rule. Paragraph (e) of subsection 5.1(2) of the Rule provides that Part 5 of the Rule does not apply to a related party transaction that is a going private transaction carried out in accordance with Part 4 of the Rule. If the issuer relies on or obtains an exemption from the valuation or majority of the minority requirements in Part 4 of the Rule, the Commission still views the going private transaction as being carried out in accordance with Part 4 of the Rule.

2.7 Related Party Transactions Carried Out in Accordance with Policy 9.1 - Paragraph (d) of subsection 4.1(2) of the Rule provides that Part 4 of the Rule does not apply to a going private transaction that was announced before the coming into force of the Rule and, among other things, is being carried out in accordance with the guidelines of Ontario Securities Commission Policy 9.1. Paragraph (i) of subsection 5.1(2) provides a similar exemption for related party transactions. The Commission is of the view that the transaction is being carried out in accordance with the guidelines of Ontario Securities Commission Policy 9.1

(1) if Policy 9.1 is being complied with, or

(2) if all or any part of a transaction is not being carried out in accordance with Policy 9.1, the transaction is being carried out in accordance with a "no-action letter" granted by staff.

2.8 Persons or Companies Involved in a Transaction - In the definitions of "interested party", "going private transaction" and "related party transaction", the Rule refers to a person or company involved in a transaction or a transaction involving a person or company. In those situations, the Rule sets out certain consequences for the person or company (e.g., disclosure, exclusion for minority approval purposes). The Commission is of the view that a director or senior officer of an issuer is not involved in a transaction merely because the director or senior officer is acting in that capacity in negotiating or approving the transaction.

2.9 Amalgamations

(1) Generally, a transaction is a going private transaction if the interest of a beneficial owner of a participating security of an issuer may be terminated without the beneficial owner's consent as a consequence of the transaction, a related party of the issuer is involved in the transaction and the transaction does not come within the exceptions to the definition of going private transaction in the Rule. The Commission is of the view that in the normal situation, where two or more arm's length operating corporations amalgamate and shareholders of the amalgamating corporations receive non-redeemable participating securities of the amalgamated corporation, a beneficial owner's interest in a participating security is not being terminated and therefore the transaction is not a going private transaction.

(2) An amalgamation between a corporation and one or more related parties of the corporation is a related party transaction for all of the amalgamating corporations.

(3) Exemptions from the valuation and minority approval requirements of the Rule may be available under paragraphs 3 and 10 of section 5.6 and paragraphs 2 and 3 of subsection 5.8(1) of the Rule for an upstream corporation amalgamating with a downstream corporation. Those exemptions are not available for the downstream corporation. Similarly, those exemptions are not available for amalgamating corporations that are related parties because of a common controlling shareholder.

(4) Paragraph 5 of section 5.6 and paragraph 3 of subsection 5.8(1) contain an exemption from the valuation requirement and minority approval requirement for certain transactions, including a reorganization of one or more classes of an issuer's affected securities if certain conditions are satisfied. A reorganization, as referred to in those paragraphs, is a reorganization of capital and would not encompass an amalgamation of the issuer with another issuer.

2.10 Same Consideration - One of the conditions to the valuation for second step going private transactions exemption in paragraph 4 of section 4.5 is that the consideration per security paid in the going private transaction is in the same form as the consideration per security paid in the formal bid. The Commission is aware that often in going private transactions, the consideration takes the form of redeemable preference shares, which are immediately redeemed for cash. The Commission is of the view that where the cash paid on redemption is the same as the cash consideration paid on the formal bid, the consideration in the going private transaction is in the same form as the consideration paid in the formal bid.

2.11 Arm's Length - Section 1.4 of the Rule provides that it is a question of fact whether two or more persons or companies act, negotiate or deal with each other at arm's length. The Commission is of the view that persons or companies related to each other by blood or marriage would not normally be considered to be dealing with each other at arm's length. The Commission also notes that in the case of the exemptions in paragraph 3 of subsection 2.4(1) and paragraph 2 of subsection 4.5(1), the arm's length relationship must be between the selling securityholder and all persons or companies that negotiated with the selling securityholder.

2.12 Previous Arm's Length Negotiations - The Commission notes that the previous arm's length negotiation exemption is based on the view that such 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 going private transaction, as the case might be, engages in "reasonable inquiries" to determine whether various circumstances exist. In the Commission's view, if an offeror cannot satisfy this requirement, 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.

2.13 Collateral Benefit

(1) A number of provisions in the Rule turn on whether a particular securityholder is receiving consideration of greater value than that received by or paid to other securityholders.

(2) The Commission notes that the words "consideration of greater value" are found in subsection 97(2) of the Act, which subsection contains what is commonly referred to as the "collateral benefit rule".

(3) Decisions considering subsection 97(2) of the Act may be of assistance in interpreting the relevant provisions in the Rule.

(4) The Commission is of the view that a securityholder does not receive consideration of greater value than another securityholder merely as a result of holding more shares than another securityholder.

PART 3 MAJORITY OF THE MINORITY APPROVAL

3.1 Majority of the Minority Approval - While the Rule provides, in a number of circumstances, for minority approval, the Commission recognizes that such a requirement may give rise to abuses. As the purpose of the Rule is to ensure fair treatment of minority securityholders, unjustifiable minority tactics in a situation involving a minimal minority position may cause the Director to grant an exemption from the requirement to obtain minority approval.

PART 4 DISCLOSURE

4.1 Form 33 Disclosure

(1) Form 32 of the Regulation (the form for a take-over bid circular) requires for an insider bid, and subsection 2.2(2) of the Rule requires for a stock exchange insider bid, the disclosure required by Form 33 of the Regulation, appropriately modified. In the view of the Commission, Form 33 disclosure would generally include, in addition to Form 32 disclosure, disclosure with respect to the following items, with necessary modifications, in the context of an insider bid or a stock exchange insider bid:

1. Item 10 Reasons for Bid

2. Item 14 Acceptance of Bid

3. Item 15 Benefits from Bid

4. Item 17 Other Benefits to Insiders, Affiliates and Associates

5. Item 18 Arrangements Between Issuer and Security Holder

6. Item 19 Previous Purchases and Sales

7. Item 21 Valuation

8. Item 24 Previous Distribution

9. Item 25 Dividend Policy

10. Item 26 Tax Consequences

11. Item 27 Expenses of Bid

(2) Paragraph (a) of subsection 4.2(2) of the Rule and paragraph (a) of subsection 5.4(2) of the Rule require, for a going private transaction and a related party transaction, respectively, the disclosure required by Form 33 of the Regulation, to the extent applicable and with necessary modifications. In the view of the Commission, Form 33 disclosure would generally include disclosure with respect to the following items, with necessary modifications, in the context of those transactions:

1. Item 5 Consideration Offered

2. Item 10 Reasons for Bid

3. Item 11 Trading in Securities to be Acquired

4. Item 12 Ownership of Securities of Issuer

5. Item 13 Commitments to Acquire Securities of Issuer

6. Item 14 Acceptance of Bid

7. Item 15 Benefits from Bid

8. Item 16 Material Changes in the Affairs of Issuer

9. Item 17 Other Benefits to Insiders, Affiliates and Associates

10. Item 18 Arrangements Between Issuer and Security Holder

11. Item 19 Previous Purchases and Sales

12. Item 20 Financial Statements

13. Item 21 Valuation

14. Item 22 Securities of Issuer to be Exchanged for Others

15. Item 23 Approval of Bid

16. Item 24 Previous Distribution

17. Item 25 Dividend Policy

18. Item 26 Tax Consequences

19. Item 27 Expenses of Bid

20. Item 28 Judicial Developments

21. Item 29 Other Material Facts

22. Item 30 Solicitations

4.2 Disclosure of Financial Information - The Commission is of the view that, in order to provide securityholders with sufficiently detailed information to form a reasoned judgment, a disclosure document delivered to securityholders in respect of transactions subject to and not exempt from the formal valuation requirements of the Rule should contain, unless such information would be irrelevant or unavailable, summary disclosure of comparative historical annual financial information over the previous three years and of historical interim financial information for the most recent period and the comparative period in the previous year, together with summary information concerning key financial statement ratios and statistics and key operating statistics over the same periods. This disclosure would be in addition to any disclosure required under Ontario securities law or referred to in Staff Accounting Communique No. 7: Financial Disclosure in Information Circulars, or other Staff Accounting Communiques or any successor instruments.

4.3 Disclosure of Smaller Related Party Transactions -The Commission is of the view that transactions involving related parties, and beneficial ownership by an issuer of, or an issuer's exercise of control or direction over, securities of related parties other than the issuer's subsidiary entities, should be disclosed to securityholders if they are material either individually or in the aggregate, in order to provide securityholders with sufficiently detailed information to form a reasoned judgment regarding such matters as the election of directors. If such transactions or ownership do not otherwise require immediate disclosure, annual disclosure may suffice. Issuers are referred, without limitation, to item 8 of Form 30 of the Regulation and other similar information circular requirements, as well as to section 3840 of the Handbook.

PART 5 VALUATIONS

5.1 Formal Valuations

(1) The Rule requires formal valuations in a number of circumstances. The Commission is of the view that a conclusory statement of opinion as to the value or range of values of the subject matter of the formal valuation does not by itself achieve this purpose.

(2) The disclosure standards proposed by the Investment Dealers Association of Canada and Appendix A to Standard #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) A person or company required to have a formal valuation prepared should, at the request of the valuator, promptly furnish the valuator with access to the person or company's management and advisers and to all material information in its possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information upon which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts or projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions upon 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) The person or company responsible for obtaining a formal valuation should work in cooperation with the valuator to ensure that the requirements of the Rule are satisfied.

(6) Subsection 2.3(2) of the Rule 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. The Commission is aware that an independent committee could attempt to use this requirement as a means to delay or impede an insider bid viewed by them 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 from the requirement that the issuer obtain a valuation.

(7) 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, an independent committee may apply for relief from the requirement that the independent committee determine the valuator and supervise the preparation of the valuation.

(8) Subsection 6.4(2) of the Rule provides that National Instrument 52-101 Future-Oriented Financial Information does not apply to a formal valuation for which financial forecasts and projections are relied upon and disclosed. National Instrument 52-101 will replace National Policy No. 48 Future-Oriented Financial Information. Until such time, National Policy No. 48 does not apply to a formal valuation for which financial forecasts and projections are relied upon and disclosed.

5.2 Independent Valuators - While, except in certain prescribed situations, the Rule provides that it is a question of fact as to whether a valuator or a person or company providing the opinion referred to in subparagraph (b)(ii) of subsection 1.3(1) is independent, situations have been identified in the past that raise serious concerns for the Commission and that must be disclosed and assessed for materiality. In determining the independence of the valuator or person or company from the interested party, a number of factors may be relevant, including whether

(a) the valuator or the person or company or an affiliated entity of either of them has a material financial interest in future business in respect of which an agreement, commitment or understanding exists involving the issuer, an interested party of the issuer or an associate or affiliated entity of the issuer or interested party;

(b) during the 24 months before the valuator or person or company was first contacted for the purpose of the formal valuation or opinion, the valuator or the person or company or an affiliated entity of either of them

(i) had a material involvement in an evaluation, appraisal or review of the financial condition of an interested party or an associate 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 an issuer or an associate or an 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 transactions involving the interested party, other than the issuer in the case of an issuer bid, or

(v) had a material financial interest in transactions involving the issuer other than by virtue of performing the services referred to in subparagraphs (b)(ii) and (b)(iii); or

(c) the valuator or the person or company or an affiliated entity of either of them 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 an 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 RELATED TRANSACTIONS

6.1 Related Transactions

(1) The definition of "related party transaction" in subsection 1.1(3) of the Rule refers to other related transactions between the issuer and the related party.

(2) Depending on the circumstances, it may be possible for an issuer to rely on one or more exemptions in the Rule in connection with a series of transactions between the issuer and a related party.

(3) The Commission may intervene if it believes that one or more exemptions are not capable of being relied upon such that a part or all of the transaction is not exempt from the proposed Rule or if a transaction is being structured or carried out in series or stages to take advantage of individual exemptions that could not be relied upon if the transaction was carried out in one step.

PART 7 ROLE OF DIRECTORS

7.1 Role of Directors

(1) Paragraphs (d) of subsection 2.2(3), (e) of subsection 3.2(1), (f) of subsection 4.2(2), (e) of subsection 5.2(1) and (f) of subsection 5.4(2) of the Rule require that the relevant disclosure documents include a discussion of the review and approval process adopted by the board of directors and the independent committee, if any, of the issuer for the relevant transaction, including any materially contrary view or abstention by a director and any material disagreement between the board and the independent committee.

(2) An issuer involved in any of the types of transactions regulated by the Rule should provide sufficient information to beneficial owners of securities to enable them to make an informed decision. Accordingly, directors should disclose their reasonable beliefs as to the desirability or fairness of the proposed transaction and make useful recommendations with regard to the transaction. A statement that the directors are unable to make or are not making a recommendation with respect to 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. The disclosure disseminated by the directors 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 beneficial owners of securities and the weight to be given to these factors in a particular context will vary with the circumstances. Normally the factors considered should include whether or not the transaction is subject to minority approval, whether or not 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 conclusions 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 an issuer bid, insider bid, going private transaction or related party transaction generally are in the best position to assess the formal valuation to be provided to securityholders. Accordingly, the Commission is of the view that, in discharging their duty to securityholders, 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 unfair advantage accruing to an interested party as a result of that party's conflict of interest or informational or other advantage in respect of the proposed transaction, it is good practice for negotiations respecting 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 interest in maintaining capital markets that operate efficiently, fairly and with integrity. While the Rule only mandates independent committees in limited circumstances, the Commission is of the view that it generally would be appropriate for, and that corporate law may require, issuers involved in a material transaction to which the Rule applies to constitute an independent committee of the board of directors to participate in the transaction. The Commission also would encourage independent committees to select the valuator, to supervise any formal valuation involved and to review the disclosure respecting the formal valuation.

(7) A special committee should, in the Commission's 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 view non-independent persons should not be present at or participate in the decision-making deliberations of the special committee.