

POLICY 5.5

STOCK EXCHANGE TAKE-OVER BIDS AND ISSUER BIDS

Scope of Policy

The statutory rules regulating take-over bids form a closed system. That is, all purchases made by an offeror must proceed by way of the procedures stipulated by the relevant Securities Laws unless the transaction(s) can be brought within an exemption from the take-over bid requirements. One exemption in the Securities Laws of several provinces applies to a take-over bid made through the facilities of a recognized stock exchange (see for example section 132(1)(a) of the Alberta Securities Act).

This Policy applies to take-over bids and issuer bids made through the facilities of the Exchange where the Exchange is recognized for this purpose under applicable Securities Laws. This Policy should be read in conjunction with the Guidelines for Take-Over Bids and Issuer Bids Made Through the Facilities of the Exchange (the “Guidelines”), set out in Appendix 5A. Normal course issuer bids are addressed in Policy 5.6 - Normal Course Issuer Bids.

A bid not made in compliance with the rules and policies of the Exchange is deemed not to be made through the facilities of the Exchange and therefore must be made in reliance on other exemptions from the applicable Securities Laws.

The main headings in this Policy are:

1. Background
2. Stock Exchange Take-Over Bids
3. Normal Course Purchases
4. Restricted Shares
5. Insider Bids
6. Issuer Bids
7. Substantial Issuer Bids
8. Exchange Discretion

1. Background

- 1.1 This Policy sets out a comprehensive code covering any take-over bid or issuer bid made through the facilities of the Exchange. The rules that govern a particular transaction depend on the nature of that transaction. Separate rules exist for the following bids:

Take-Over Bids

“Formal” Take-Over Bids
Insider Bids
Normal Course Purchases

Issuer Bids

Substantial Issuer Bids
Certain Substantial Issuer Bids for Non-Equity and Non-Voting Securities
Normal Course Issuer Bids

- 1.2 The Exchange’s Policies on take-over bids and issuer bids made through its facilities are intended to be simple and efficient, and to protect investors, while balancing the goals of maintaining confidence and neutrality as between the offerors, the offeree company management and competing offerors. They are not intended to reduce the effective protection available to shareholders in any transaction.
- 1.3 Except that offers made through the facilities of the Exchange are restricted to cash consideration, cannot be withdrawn (except in limited circumstances) and can not specify a minimum number of shares that must be tendered before the offeror is bound to take them up, they are very similar to bids made by way of circular. For example, as with the rules applicable to circular bids, these policies specify periods for disclosure, solicitation and take-up of shares tendered pursuant to an offer.
- 1.4 Additional requirements apply to insider bids and substantial issuer bids. In these cases, the offeror must normally prepare a valuation of the target company, so that shareholders will have the same information as that available to the offeror to judge whether the bid price is fair.
- 1.5 Small purchases by offerors are governed by section 3 of this Policy on Normal Course Purchases and by Policy 5.6 - Normal Course Issuer Bids.

1.6 Definitions

In this Policy:

“equity security” means a security that carries a residual right to participate both in the earnings of the Issuer and the assets of the Issuer upon liquidation or winding-up, and includes Restricted Shares that are listed on the Exchange if they fall within this definition;

“Issuer Bid” means an offer to acquire listed Voting Shares or listed equity securities made by or on behalf of an Issuer for securities issued by the Issuer;

“Normal Course Purchase” means a Take-Over Bid made by way of a purchase on the Exchange of a number of a class of securities of an Issuer that, together with all purchases of those 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, other than purchases by way of a Stock Exchange Take-Over Bid or circular bid or purchases from treasury, do not aggregate more than 5% of the securities of that class outstanding at the time the purchase is made;

“Ranking Bid” means the Stock Exchange Take-Over Bid that yields the highest average bid value;

“Stock Exchange Take-Over Bid” means a Take-Over Bid, other than a Normal Course Purchase, made through the facilities of the Exchange;

“Take-Over Bid” means an offer to acquire a number of the listed Voting Shares or listed equity securities of an Issuer that, together with the offeror’s securities, will in the aggregate:

- (a) constitute 20% or more of the outstanding securities of that class, or
- (b) in the case of an offeree issuer that is subject to the *Canada Business Corporations Act*, constitute 10% or more of the outstanding securities of a class of listed Voting Shares, on the date of the offer to acquire.

2. Stock Exchange Take-Over Bids

2.1 Calculation of Thresholds and Number of Shares

- (a) Purchase thresholds are determined in accordance with the Securities Laws. To determine whether the threshold for a Take-Over Bid has been met and whether the Normal Course Purchase limits have been observed, each class of shares is viewed separately. Therefore, if a purchaser offers to acquire 20% or more of a particular class of Voting Shares or equity securities, it is a Take-Over Bid.
- (b) A purchaser must count the number of target shares owned or controlled on the date of the offer to acquire by the purchaser and by any Person acting jointly or in concert with the purchaser, together with the number of target shares proposed to be acquired through the offer.
- (c) The purchaser must also count the number of target shares that it has the right to acquire within 60 days after the date of the offer to acquire by conversion, subscription, option, warrant or otherwise. If the total number of target shares owned and proposed to be acquired is 20% or more of the total number of target shares outstanding, the purchaser is making a Take-Over Bid.

- (d) If the offeree company is incorporated under the *Canada Business Corporations Act*, the threshold is 10% of the issued and outstanding securities in the case of Voting Shares, including securities already beneficially owned or controlled, directly or indirectly, by the offeror or an Affiliate or Associate of the offeror, and securities held by those Persons that are currently convertible or exercisable into Voting Shares or into convertible securities.

2.2 Restrictions on Acquisitions Before and After a Bid

The definition of “formal bid” in the Securities Laws includes a bid made pursuant to the stock exchange exemption. Under the Securities Laws, during a Take-Over Bid an offeror can make purchases only on a recognized stock exchange. Purchases cannot exceed 5% of the shares of the relevant class outstanding on the date of the bid. This Policy further limits purchases by an offeror, as explained below.

The Securities Laws govern private transactions in the 90 days preceding a bid and restrict acquisitions for 20 business days after expiry of a bid. Normal Course Purchases on a recognized stock exchange are exempt from these restrictions. If Normal Course Purchases are made on the Exchange, the requirements of this Policy must be observed. Offerors may also be restricted by the provisions contained in Ontario Securities Commission Policy 9.3 or any successor policy.

2.3 Going Private Transaction

If an offeror making a Stock Exchange Take-Over Bid anticipates that a “going private transaction” (as defined in the Securities Laws) will follow the Take-Over Bid, the valuation requirements set out in the applicable Securities Laws must be complied with.

2.4 Procedure for Stock Exchange Take-Over Bids

Intention to Make a Stock Exchange Take-over Bid

- (a) Any Person proposing to make a Stock Exchange Take-Over Bid should first consult with the Exchange. This allows for effective market surveillance and timely disclosure, and provides an early opportunity to discuss applicable procedures.

Timely Disclosure

- (b) Under Policy 3.3 - Timely Disclosure, an offeror must publicly announce its intention to make a bid as soon as the final decision to proceed with a bid is made.
- (c) The offeror must prepare and submit to the Listings Department a draft notice (the “**Notice**”) disclosing the information set out in section 4 of the Guidelines. All drafts are filed on a confidential basis.

- (d) Section 4(1)(m) of the Guidelines requires that the Notice include a statement of the rights provided by the Securities Laws. The following language is recommended:

“Securities legislation in certain of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult with a lawyer.”

Closing Price

- (e) For the purpose of calculating the closing price under section 1(1)(d) of the Guidelines, the Exchange recognizes The Toronto Stock Exchange and the Montreal Exchange.

Evidence of Satisfactory Financial Arrangements

- (f) Under section 4(1)(o) of the Guidelines, the offeror must provide the Exchange with satisfactory information about its identity and its financial resources. Normally, the Exchange will require a bank letter or other evidence that the offeror has access to sufficient funds to pay for any shares that it must take up under the offer.

Acceptance of the Notice

- (g) When the draft Notice is in satisfactory form, the offeror submits a copy of the final version, duly executed, for acceptance by the Exchange, accompanied by the applicable fee as set out in Policy 1.3 - Schedule of Fees. A bid commences once the Notice is formally accepted by the Exchange.

News Release

- (h) The offeror must issue a news release announcing that the Notice has been accepted by the Exchange and indicating the terms of the offer.

Communication with Shareholders

- (i) The offeror must notify all holders of the target securities of the terms of the offer by first class mail and advertising, or by such other means as may be acceptable to the Exchange, in each jurisdiction where such communication is permitted by law. Normally, the Exchange requires that the offer be mailed to all shareholders and that an advertisement containing a summary of the offer be placed in a national newspaper of sufficiently wide circulation to assure dissemination of the offer to all shareholders resident in Canada. The offer must also be mailed to each registered holder of securities convertible or exchangeable into the class of securities that the bid is for, and to each holder that has a right to participate in the offer on some other basis.

- (j) If the offer is to remain open for a period equal to or longer than the period required for circular bids, the Exchange will consider waiving the advertising requirement.
- (k) If there is a disruption in postal service, or if there are only a few Shareholders in a particular province, direct communication with these Shareholders, by telephone, telegraph or telex is acceptable.
- (l) Members must make reasonable efforts to communicate the terms of the bid to all clients who are shown on their books as holding target shares.

Time Period within which Bid Must Remain Open

- (m) The book for receipt of tenders may not be opened until the morning of the twenty-first calendar day after acceptance of the Notice. The time begins to run from acceptance of the Notice, not from the time of mailing. If the Notice is not mailed to shareholders within a reasonably short period after acceptance, the Exchange will require that the time for the offer be extended in order to ensure adequate dissemination. If the offer is to remain open for the minimum period, i.e., until the morning of the 21st calendar day after acceptance of the Notice, the Notice should be mailed within 24 hours after acceptance of the Notice by the Exchange.

Purchases During a Take-over Bid

- (n) An offeror making a Stock Exchange Take-Over Bid can purchase shares through the facilities of the Exchange only if granted an exemption by the Exchange. The purchases are limited to the amounts permitted by the Normal Course Purchase rules. The Exchange will normally grant an exemption only if there is a competing circular bid. If an exemption is granted, the purchases are limited to 5% of the issued and outstanding shares including purchases by the offeror and Persons acting jointly or in concert with the offeror during the preceding 90 days.

Competing Take-over Bids

- (o) Section 10 of the Guidelines contains specific provisions regarding competing Stock Exchange Take-Over Bids.
- (p) In the case of competing Stock Exchange Take-Over Bids, neither the Ranking Bid nor the last bid may be withdrawn.
- (q) Each competing bid's average bid value should be calculated at the time of the announcement of the last bid.
- (r) The books in respect of the competing Stock Exchange Take-Over Bids must be opened on the same date, which is fixed by the Exchange.

Amendments to Bids

- (s) The terms of a Stock Exchange Take-Over Bid can be amended to increase the price offered per share or the number of shares sought or to agree to pay an amount in respect of the seller's commission or a combination thereof. Notice must be given under section 8 of the Guidelines. Ranking Bids may not be altered except to increase the average bid value.

Withdrawal of Bids

- (t) A Stock Exchange Take-Over Bid cannot be withdrawn unless the Exchange is satisfied that an undisclosed action before the date of the offer or an action after that date by the board of directors or senior officers of the target company or by any Person other than the offeror, effects an adverse Material Change in the affairs of the target company. If there are competing Stock Exchange Take-Over Bids, a bid that is neither the Ranking Bid nor the last bid can also be withdrawn.

Book for Receipt of Tenders

- (u) Normally, a book for receipt of securities tendered to a Stock Exchange Take-Over Bid is opened on the trading floor between 5:30 a.m. and 6:30 a.m. (Vancouver time) on a particular day. However, the Exchange recognizes that in certain circumstances – for example, to facilitate simultaneous acceptance and settlement – it may be desirable to open the book at other times, such as before 1:30 p.m. (Vancouver time). The regular settlement rules normally apply to bids made before the opening; however, the Exchange can determine that other settlement rules apply to a particular bid. For bids made after the close, it may not be possible to enter the trades until the following morning. In that case, settlement will be as determined by the Exchange.

Extension of the Bid

- (v) The Exchange can, in its discretion, and at the request of the offeror, grant an extension of the bid after the book has closed. An extension will normally be granted if the offeror has failed to acquire the number of securities that it originally intended to acquire.

Rounding Up

- (w) In order to simplify the pro-rating and to reduce the number of odd lots, the Exchange can request the offeror to take up a number of securities slightly in excess of the number for which it originally bid.

Conduct of Members

- (x) Members of the Exchange are prohibited from knowingly assisting or participating in the tendering of more listed Voting Shares than are owned by the tendering party. The Exchange's trading and tendering rules will be designed in each case to protect the integrity of the prorate.

- (y) Securities tendered by professional trading or house accounts may be included in the securities tendered in determining the number of securities to be taken up by the offeror.
- (z) A Member must not record a price on the Exchange that, in the case of a sale by a customer, is lower than the actual net price to the customer. In other words, negative commissions are prohibited in the interests of the integrity of the market. A customer may not be paid more for his shares than the actual price of the trades pursuant to a Take-Over Bid.

3. Normal Course Purchases

- 3.1 A “Normal Course Purchase” is defined in section 1(1)(j) of the Guidelines as a purchase of such number of a class of securities that, together with all other purchases in the preceding 12 months, constitutes no more than 5% of the securities outstanding.
- 3.2 A Normal Course Purchase is defined as a Take-Over Bid, and therefore only applies to outstanding purchasers that hold, or would hold after the purchase, at least 20% of the outstanding shares (10% in the case of a Company incorporated under the *Canada Business Corporations Act*).
- 3.3 The Normal Course Purchase rules apply only to purchases of listed Voting Shares or listed equity securities.
- 3.4 Securities purchased by Persons acting jointly or in concert with the offeror are included in determining the total number of securities purchased.
- 3.5 An offeror may acquire up to 5% of the outstanding shares in a given 12 month period without filing with the Exchange.
- 3.6 For the purpose of determining whether an offeror is making a Normal Course Purchase (i.e. calculating whether the 20% threshold has been or will be reached)
 - (a) the beneficial ownership of securities by the offeror and any Person acting jointly or in concert with the offeror; and
 - (b) the number of outstanding securitiesare determined in accordance with applicable Securities Laws.

4. Restricted Shares

Under the Securities Laws, purchases of Restricted Shares which are listed on the Exchange must comply with the same requirements imposed on the purchase of listed Voting Shares under the Guidelines and this Policy. When determining whether the threshold for a Take-Over Bid has been met and whether the Normal Course Purchase limits have been observed, each class of Restricted Shares is viewed separately. A Normal Course Purchase is considered to have been made, for example, if the purchases of Restricted Shares of the class made in the preceding 12 months through the facilities of a stock exchange, or otherwise, other than purchases by way of a Stock Exchange Take-Over Bid or circular bid or shares issued from treasury, does not aggregate more than 5% of the class of Restricted Shares outstanding at the time that the purchase is made.

5. Insider Bids

- 5.1 If the Stock Exchange Take-Over Bid is made by an Issuer or any Associate or Affiliate of an Insider, the Notice shall include the information required in an issuer bid circular under the applicable Securities Laws.
- 5.2 Unless a waiver is obtained from the relevant Securities Commission(s), a valuation of the target company must be prepared in accordance with the requirements of the applicable Securities Laws.

6. Issuer Bids

- 6.1 An Issuer can purchase its Listed Shares through the facilities of the Exchange only in accordance with the Exchange requirements. Issuer Bids fall into two categories:
 - (a) **Normal Course Issuer Bids** - Normal course issuer bids are limited to market purchases made at the market price over an extended period of time. The Exchange's requirements with respect to normal course issuer bids are set out in Policy 5.6 - Normal Course Issuer Bids. Generally, purchases must not exceed the greater of 5% of issued and outstanding shares or 10% of the Public Float over a 12 month period and 2% in any 30 day period.
 - (b) **Substantial Issuer Bids** - Substantial issuer bids are Issuer Bids that are not normal course issuer bids. The Exchange's requirements for substantial issuer bids are set out in section 7 below.

7. Substantial Issuer Bids

- 7.1 The rules for substantial issuer bids for Voting Shares or equity securities are basically the same as those for a Take-Over Bid. An Issuer making a substantial issuer bid for Voting Shares or equity securities through the facilities of the Exchange must file a Notice with the Exchange in accordance with section 4 of the Guidelines, and with the procedures described in section 2 of this Policy. Unless a waiver is obtained from the relevant Securities Commission(s), a valuation of the target company must be prepared in accordance with the applicable Securities Laws.
- 7.2 A simpler procedure is available for Issuer Bids for securities that are neither Voting Shares nor equity securities if there is no requirement to provide a valuation or if exemptions from all applicable valuation requirements have been obtained. In this case, the Issuer can file a less detailed form of Notice with the Exchange, and is not required to mail a copy of the Notice to each shareholder. The book for receipt of tenders may be held on the twenty-first day after the Exchange accepts the Notice of Issuer Bid.
- 7.3 The Issuer must issue a news release indicating its intention to make a substantial issuer bid immediately after the Exchange has accepted Notice of the bid. The news release must summarize the material aspects of the Notice, including the class of securities sought, the maximum number of securities sought, the date of the book and procedures for tendering. Once a news release has been issued, the Issuer is committed to making the bid.

8. Exchange Discretion

The Exchange may relieve any Person or Issuer from the provisions of the Guidelines if it would not be prejudicial to the public interest to do so, and may impose such other obligations as circumstances may warrant, on the terms and conditions that the Exchange considers appropriate. The Exchange can deny any Person or Issuer the use of Exchange facilities.
