

Nova Scotia Securities Commission

Rule 62-104 (Amendment)
Take-Over Bids and Issuer Bids

- and-

Amendments to Multilateral Instrument 62-104
Take-Over Bids and Issuer Bids

- and-

Changes to National Policy 62-203
Take-Over Bids and Issuer Bids

WHEREAS:

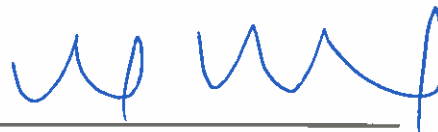
1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (the Rule) and Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (the Policy), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy as a policy of the Commission; and
- (c) declares that the Rule approved and made pursuant to clause (a) and the Policy issued pursuant to clause (b) shall take effect on **May 9, 2016**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act

in which event the rule and the policy statement shall not become effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 24th day of February, 2016.

A handwritten signature in blue ink, consisting of a series of connected loops and curves, positioned above a horizontal line.

Paul Radford Q.C.,
Chair

Attachments

Amendments to
Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids

1. *Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.*

2. *Subsection 1.8(1) is replaced with the following:*

1.8(1) In this Instrument, in determining the beneficial ownership of securities of an offeror, of an acquiror or of any person acting jointly or in concert with the offeror or the acquiror, at any given date, the offeror, the acquiror or the person is deemed to have acquired and to be the beneficial owner of a security, including an unissued security, if the offeror, the acquiror or the person

- (a) is the beneficial owner of a security convertible into the security within 60 days following that date, or
- (b) has a right or obligation permitting or requiring the offeror, the acquiror or the person, whether or not on conditions, to acquire beneficial ownership of the security within 60 days by a single transaction or a series of linked transactions..

3. *Subsection 1.9(1) is replaced with the following:*

1.9(1) In this Instrument, it is a question of fact as to whether a person is acting jointly or in concert with an offeror or an acquiror and, without limiting the generality of the foregoing,

- (a) the following are deemed to be acting jointly or in concert with an offeror or an acquiror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror, the acquiror or with any other person acting jointly or in concert with the offeror or the acquiror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
 - (ii) an affiliate of the offeror or the acquiror;
- (b) the following are presumed to be acting jointly or in concert with an offeror or an acquiror:

- (i) a person that, as a result of any agreement, commitment or understanding with the offeror, the acquiror or with any other person acting jointly or in concert with the offeror or the acquiror, intends to exercise jointly or in concert with the offeror, the acquiror or with any person acting jointly or in concert with the offeror or the acquiror any voting rights attaching to any securities of the offeree issuer;
- (ii) an associate of the offeror or the acquiror..

4. Part 5 is replaced with the following:

PART 5: REPORTS AND ANNOUNCEMENTS OF ACQUISITIONS

Definitions and Interpretation

5.1 (1) In this Part,

“acquiror” means a person who acquires a security, other than by way of a take-over bid or an issuer bid made in compliance with Part 2;

“acquiror’s securities” means securities of an issuer beneficially owned, or over which control or direction is exercised, on the date of the acquisition or disposition, by an acquiror or any person acting jointly or in concert with the acquiror;

“specified securities lending arrangement” means a securities lending arrangement if all of the following apply:

- (a) the material terms of the securities lending arrangement are set out in a written agreement;
- (b) the securities lending arrangement requires the borrower to pay to the lender amounts equal to all dividends or interest payments, if any, paid on the security that would have been received by the lender if the lender had held the security throughout the period beginning at the date of the transfer or loan and ending at the time the security or an identical security is transferred or returned to the lender;
- (c) the lender has established policies and procedures that require the lender to maintain a record of all securities that it has transferred or lent under securities lending arrangements;
- (d) the written agreement referred to in paragraph (a) provides for any of the following:

- (i) the lender has an unrestricted right to recall all securities that it has transferred or lent under the securities lending arrangement, or an equal number of identical securities, before the record date for voting at any meeting of securityholders at which the securities may be voted;
- (ii) the lender requires the borrower to vote the securities transferred or lent in accordance with the lender's instructions;

“securities lending arrangement” means an arrangement between a lender and a borrower with respect to which both of the following apply:

- (a) the lender transfers or lends a security to the borrower;
 - (b) at the time that the security is lent or transferred, the lender and the borrower reasonably expect that the borrower will, at a later date, transfer or return to the lender the security or an identical security.
- (2) For the purposes of this Part, if an acquiror and one or more persons acting jointly or in concert with the acquiror acquire or dispose of securities, the securities are deemed to be acquired or disposed of, as applicable, by the acquiror.

Early warning

- 5.2 (1) An acquiror who acquires beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer, or securities convertible into voting or equity securities of any class of a reporting issuer, that, together with the acquiror's securities of that class, constitute 10% or more of the outstanding securities of that class, must
- (a) promptly, and, in any event, no later than the opening of trading on the business day following the acquisition, issue and file a news release containing the information required by section 3.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*, and
 - (b) promptly, and, in any event, no later than 2 business days from the date of the acquisition, file a report containing the information required by section 3.1 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*.
- (2) An acquiror who is required to make disclosure under subsection (1) must make further disclosure, in accordance with subsection (1), each time any of the following events occur:

- (a) the acquiror or any person acting jointly or in concert with the acquiror, acquires or disposes beneficial ownership of, or acquires or ceases to have control or direction over, either of the following:
 - (i) securities in an amount equal to 2% or more of the outstanding securities of the class of securities that was the subject of the most recent report required to be filed by the acquiror under subsection (1) or under this subsection;
 - (ii) securities convertible into 2% or more of the outstanding securities referred to in subparagraph (i);
 - (b) there is a change in a material fact contained in the most recent report required to be filed under paragraph (1)(b) or under paragraph (a) of this subsection.
- (3) An acquiror must issue and file a news release and file a report in accordance with subsection (1) if beneficial ownership of, or control or direction over, the outstanding securities of the class of securities that was the subject of the most recent report required to be filed by the acquiror under this section decreases to less than 10%.
- (4) If an acquiror issues and files a news release and files a report under subsection (3), the requirements under subsection (2) do not apply unless subsection (1) applies in respect of a subsequent acquisition of beneficial ownership of, or control or direction over, voting or equity securities of any class of a reporting issuer, or securities convertible into voting or equity securities of any class of a reporting issuer, that, together with the acquiror's securities of that class, constitute 10% or more of the outstanding securities of that class.

Moratorium provisions

- 5.3 (1) During the period beginning on the occurrence of an event in respect of which a report is required to be filed under section 5.2 and ending on the expiry of the first business day following the date that the report is filed, an acquiror, or any person acting jointly or in concert with the acquiror, must not acquire or offer to acquire beneficial ownership of, or control or direction over, any securities of the class in respect of which the report is required to be filed or any securities convertible into securities of that class.
- (2) Subsection (1) does not apply to an acquiror that has beneficial ownership of, or control or direction over, securities that, together with the acquiror's securities of that class, constitute 20% or more of the outstanding securities of that class.

Acquisitions during bid

- 5.4 (1) If, after a take-over bid or an issuer bid has been made under Part 2 for voting or equity securities of a reporting issuer and before the expiry of the bid, an acquiror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the acquiror's securities of that class, constitute 5% or more of the outstanding securities of that class, the acquiror must, before the opening of trading on the next business day, issue and file a news release containing the information required by subsection (3).
- (2) An acquiror must issue and file an additional news release in accordance with subsection (3) before the opening of trading on the next business day each time the acquiror, or any person acting jointly or in concert with the acquiror, acquires beneficial ownership of, or control or direction over, in aggregate, an additional 2% or more of the outstanding securities of the class of securities that was the subject of the most recent news release required to be filed by the acquiror under this section.
- (3) A news release or further news release required under subsection (1) or (2) must set out
- (a) the name of the acquiror,
 - (b) the number of securities of the offeree issuer that were beneficially acquired, or over which control or direction was acquired, in the transaction that gave rise to the requirement under subsection (1) or (2) to issue the news release,
 - (c) the number of securities and the percentage of outstanding securities of the offeree issuer that the acquiror and all persons acting jointly or in concert with the acquiror, have beneficial ownership of, or control or direction over, immediately after the acquisition described in paragraph (b),
 - (d) the number of securities of the offeree issuer that were beneficially acquired, or over which control or direction was acquired, by the acquiror and all persons acting jointly or in concert with the acquiror, since the commencement of the bid,
 - (e) the name of the market in which the acquisition described in paragraph (b) took place, and
 - (f) the purpose of the acquiror and all persons acting jointly or in concert with the acquiror in making the acquisition described in paragraph (b), including any intention of the acquiror and all persons acting jointly or in concert with the acquiror to increase the

beneficial ownership of, or control or direction over, any of the securities of the offeree issuer.

Duplicate news release not required

- 5.5 If the facts in respect of which a news release is required to be filed under sections 5.2 and 5.4 are identical, a news release is required only under the provision requiring the earlier news release.

Copies of news release and report

- 5.6 An acquiror that files a news release or report under section 5.2 or 5.4 must promptly send a copy of each filing to the reporting issuer.

Exception

- 5.7 Sections 5.2, 5.3 and 5.4 do not apply to either of the following:

- (a) an acquiror that is a lender in respect of securities transferred or lent pursuant to a specified securities lending arrangement;
- (b) an acquiror that is a borrower in respect of securities or identical securities borrowed, disposed of or acquired in connection with a securities lending arrangement if all of the following apply:
 - (i) the borrowed securities are disposed of by the borrower no later than 3 business days from the date of the transfer or loan;
 - (ii) the borrower will at a later date acquire the securities or identical securities and transfer or return those securities to the lender;
 - (iii) the borrower does not intend to vote and does not vote the securities or identical securities during the period beginning on the date of the transfer or loan and ending at the time the securities or identical securities are transferred or returned to the lender..

5. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

Changes to
National Policy 62-203 Take-Over Bids and Issuer Bids

- 1. National Policy 62-203 Take-Over Bids and Issuer Bids is changed by this document.*
- 2. National Policy 62-203 Take-Over Bids and Issuer Bids is changed by adding the following Part after Part 2:*

PART 3 TAKE-OVER BID AND EARLY WARNING REQUIREMENTS

- 3.1 Equity swap or similar derivative arrangement** – An investor that is a party to an equity swap or similar derivative arrangement may under certain circumstances have deemed beneficial ownership, or control or direction, over the referenced voting or equity securities. This could occur where the investor has the ability, formally or informally, to obtain the voting or equity securities or to direct the voting of voting securities held by any counterparties to the transaction. This determination would be relevant for compliance with the early warning and take-over bid requirements under the Instrument.
- 3.2 Securities lending arrangements** – Securities lending describes the market practice whereby securities are temporarily transferred from one party (the lender) to another party (the borrower) in return for a fee. As part of the lending arrangement, the borrower is obliged to redeliver to the lender the securities or identical securities to those that were transferred or lent, either on demand or at the end of the loan term.

Securities lending arrangements transfer title of securities from the lender to the borrower for the duration of the loan. During this period, the borrower has full ownership rights and may re-sell the securities as well as vote them. Securities lending arrangements between the lender and the borrower generally provide for payment to the lender of any economic benefits (for example, dividends) accruing to the securities while “on loan”. Therefore, securities lending separates the economic interest in the securities which remains with the lender from the ownership and voting rights which are transferred to the borrower. If the lender wants to vote the loaned securities it must, in accordance with the terms of the securities lending arrangement, either recall the securities or identical securities from the borrower or otherwise direct the voting of the loaned securities.

Since securities lending arrangements involve a disposition and acquisition of securities, lenders and borrowers should consider securities lent (disposed) and

borrowed (acquired) under securities lending arrangements in determining whether an early warning reporting obligation has been triggered.

Paragraph 5.7(a) of the Instrument provides an exception for the lender of securities under a securities lending arrangement from the early warning requirements if the securities are transferred or lent pursuant to a securities lending arrangement that meets the criteria of a specified securities lending arrangement. If the securities lending arrangement is not a specified securities lending arrangement, then the early warning reporting requirements for dispositions of securities will apply to the disposition of securities by the lender under the securities lending arrangement.

Paragraph 5.7(b) of the Instrument provides an exception for the borrower of securities under a securities lending arrangement from the early warning requirements if the securities or identical securities are borrowed, disposed of or acquired in connection with a borrower's short sale if certain conditions are met. Short selling is a trading strategy where the borrower uses securities borrowed under a securities lending arrangement to settle a sale (disposition) of the securities to another party with the objective of later repurchasing (acquiring) identical securities at a lower price on the market to return the securities to the lender. If all the conditions of paragraph 5.7(b) are not satisfied, then the early warning reporting requirements will apply to the borrower in respect of securities borrowed under the securities lending arrangement and the disposition of and acquisition of the securities or identical securities in the market in connection with the securities lending arrangement..

3. Except in Ontario, these changes become effective on May 9, 2016. In Ontario, these changes become effective on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.