

Nova Scotia Securities Commission

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

-and-

Consequential Amendments to Rules 11-102, 13-102, 43-101, 51-105, and 62-103

-and-

**Amendments to Multilateral Instrument 11-102 *Passport System*, Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, Multilateral Instrument 51-105 *Issuers Quoted in the U.S Over-the-Counter Markets*, and National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*
(collectively, the Rule Amendments)**

-and-

**Changes to Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions*
(the Policy Amendment)**

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. The Rule Amendments and the Policy Amendment, 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 Amendments 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 Amendment as a policy statement of the Commission; and
- (c) declares that the Rule Amendments approved and made pursuant to clause (a) and the issuance of the Policy Amendment pursuant to clause (b) shall both 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 be 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 several loops and a vertical line at the end, positioned above a horizontal line.

Paul Radford, Q.C.,
Chair

Attachments

**AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 PASSPORT SYSTEM**

1. *Multilateral Instrument 11-102 Passport System is amended by this Instrument.*
2. *Appendix D is amended by replacing the following:*

Take-over bids and issuer bid requirements (TOB/IB) – Restrictions on acquisitions during take-over bid	s.2.2(1) of MI 62-104	s.93.1(1)
TOB/IB – Restrictions on acquisitions during issuer bid	s.2.3(1) of MI 62-104	s.93.1(4)
TOB/IB – Restrictions on acquisitions before take-over bid	s.2.4(1) of MI 62-104	s.93.2(1)
TOB/IB – Restrictions on acquisitions after bid	s.2.5 of MI 62-104	s.93.3(1)
TOB/IB – Restrictions on sales during formal bid	s.2.7(1) of MI 62-104	s.97.3(1)
TOB/IB – Duty to make bid to all security holders	s.2.8 of MI 62-104	s.94
TOB/IB – Commencement of bid	s.2.9 of MI 62-104	s.94.1(1) and (2)
TOB/IB – Offeror’s circular	s.2.10 of MI 62-104	s.94.2(1) - (4) of <i>Securities Act</i> and s.3.1 of OSC Rule 62-504
TOB/IB – Change in information	s.2.11(1) of MI 62-104	s.94.3(1)
TOB/IB – Notice of change	s.2.11(4) of MI 62-104	s.94.3(4) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Variation of terms	s.2.12(1) of MI 62-104	s.94.4(1)

TOB/IB – Notice of variation	s.2.12(2) of MI 62-104	s.94.4(2) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Expiry date of bid if notice of variation	s.2.12(3) of MI 62-104	s.94.4(3)
TOB/IB – No variation after expiry	s.2.12(5) of MI 62-104	s.94.4(5)
TOB/IB – Filing and sending notice of change or notice of variation	s.2.13 of MI 62-104	s.94.5
TOB/IB – Change or variation in advertised take-over bid	s.2.14(1) of MI 62-104	s.94.6(1)
TOB/IB – Consent of expert – bid circular	s.2.15(2) of MI 62-104	s.94.7(1)
TOB/IB – Delivery and date of bid documents	s.2.16(1) of MI 62-104	s.94.8(1)
TOB/IB – Duty to prepare and send directors’ circular	s.2.17 of MI 62-104	s.95(1)–(4) of <i>Securities Act</i> and s.3.2 of OSC Rule 62-504
TOB/IB – Notice of change	s.2.18 of MI 62-104	s.95.1(1) and (2) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Filing directors’ circular or notice of change	s.2.19 of MI 62-104	s.95.2
TOB/IB – Change in information in director’s or officer’s circular or notice of change	s.2.20(2) of MI 62-104	s.96(2)
TOB/IB – Form of director’s or officer’s circular	s.2.20(3) of MI 62-104	s.96(3) of <i>Securities Act</i> and s.3.3 of OSC Rule 62-504
TOB/IB – Send director’s or officer’s circular or notice of change to securityholders	s.2.20(5) of MI 62-104	s.96(5)

TOB/IB – File and send to offeror director’s or officer’s circular or notice of change	s.2.20(6) of MI 62-104	s.96(6)
TOB/IB – Form of notice of change for director’s or officer’s circular	s.2.20(7) of MI 62-104	s.96(7) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Consent of expert, directors’ circular, etc.	s.2.21 of MI 62-104	s.96.1
TOB/IB – Delivery and date of offeree issuer’s documents	s.2.22(1) of MI 62-104	s.96.2(1)
TOB/IB – Consideration	s.2.23(1) of MI 62-104	s.97(1)
TOB/IB – Variation of consideration	s.2.23(3) of MI 62-104	s.97(3)
TOB/IB – Prohibition against collateral agreements	s.2.24 of MI 62-104	s.97.1(1)
TOB/IB – Proportionate take up and payment	s.2.26(1) of MI 62-104	s.97.2(1)
TOB/IB – Financing arrangements	s.2.27(1) of MI 62-104	s.97.3(1)
TOB/IB – Minimum deposit period	s.2.28 of MI 62-104	s.98(1)
TOB/IB – Prohibition on take up	s.2.29 of MI 62-104	s.98(2)
TOB/IB – Obligation to take up and pay for deposited securities	s.2.32 of MI 62-104	s.98.3
TOB/IB – Return of deposited securities	s.2.33 of MI 62-104	s.98.5
TOB/IB – News release on expiry of bid	s.2.34 of MI 62-104	s.98.6
TOB/IB – Language of bid documents	s.3.1 of MI 62-104	n/a

TOB/IB – Filing of documents by offeror	s.3.2(1) of MI 62-104	s.98.7 of <i>Securities Act</i> and s.5.1(1) of OSC Rule 62-504
TOB/IB – Filing of documents by offeree issuer	s.3.2(2) of MI 62-104	s.5.1(2) of OSC Rule 62-504
TOB/IB – Time period for filing	s.3.2(3) of MI 62-104	s.5.1(3) of OSC Rule 62-504
TOB/IB – Filing of subsequent agreement	s.3.2(4) of MI 62-104	s.5.1(4) of OSC Rule 62-504
TOB/IB – Certification of bid circulars	s.3.3(1) of MI 62-104	s.99(1)
TOB/IB – All directors and officers sign	s.3.3(2) of MI 62-104	s.99(2)
TOB/IB – Certification of directors' circular	s.3.3(3) of MI 62-104	s.99(3)
TOB/IB – Certification of individual director's or officer's circular	s.3.3(4) of MI 62-104	s.99(4)
TOB/IB – Obligation to provide security holder list	s.3.4(1) of MI 62-104	s.99.1(1)
TOB/IB – Application of Canada Business Corporations Act	s.3.4(2) of MI 62-104	s.99.1(2)
TOB/IB – Early Warning	s.5.2 of MI 62-104	s.102.1(1) – (4) of <i>Securities Act</i> and s.7.1 of OSC Rule 62-504
TOB/IB – Acquisitions during bid	s.5.3 of MI 62-104	s.102.2(1) and (2) of <i>Securities Act</i> and s.7.2(1) of OSC Rule 62-504
TOB/IB – Copies of news release and report	s.5.5 of MI 62-104	s.7.2(3) of OSC Rule 62-504

with the following:

Take-over bid and issuer bid requirements	NI 62-104
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3. 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.

**AMENDMENTS TO
MULTILATERAL INSTRUMENT 13-102 SYSTEM FEES FOR SEDAR AND NRD**

1. *Multilateral Instrument 13-102 System Fees for SEDAR and NRD is amended by this Instrument.*
2. *Subsection 1(1) is amended*
 - (a) *by replacing the definition of “issuer bid” with the following:*

“issuer bid” means an issuer bid to which Part 2 of National Instrument 62-104 Take-Over Bids and Issuer Bids applies; , and
 - (b) *by replacing the definition of “take-over bid” with the following:*

“take-over bid” means a take-over bid to which Part 2 of National Instrument 62-104 Take-Over Bids and Issuer Bids applies..
3. 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.

**AMENDMENTS TO
NATIONAL INSTRUMENT 43-101 STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS**

1. *National Instrument 43-101 Standards of Disclosure for Mineral Projects is amended by this Instrument.*
2. *Section 1.1 is amended by adding the following definition:*
“initial deposit period” has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*..
3. *Subparagraph 4.2(5)(a)(ii) is amended by replacing “expiry of the take-over bid” with “the expiry of the initial deposit period”.*
4. 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.

**AMENDMENTS TO
MULTILATERAL INSTRUMENT 51-105 ISSUERS QUOTED IN THE U.S.
OVER-THE-COUNTER MARKETS**

1. *Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.*
2. *Section 16 is amended by replacing “Multilateral” with “National”.*
3. 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.

**AMENDMENTS TO
NATIONAL INSTRUMENT 62-103 *THE EARLY WARNING SYSTEM
AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES***

1. *National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues is amended by this Instrument.*
2. *Subsection 1.1(1) is amended*
 - (a) *by replacing “MI” with “NI” and deleting “and, in Ontario, has the meaning ascribed under paragraphs (a.1) to (f) of the definition of “associate” in subsection 1(1) of the Securities Act (Ontario)” in the definition of “associate”,*
 - (b) *by replacing “MI” with “NI” and deleting “and, in Ontario, subsections 102.1(1) and 102.1(2) of the Securities Act (Ontario)” in the definition of “early warning requirements”,*
 - (c) *by replacing the definition of “formal bid” with the following:*

“formal bid” means a take-over bid or issuer bid made in accordance with Part 2 of NI 62-104; ,
 - (d) *by repealing the definition of “MI 62-104”,*
 - (e) *by replacing “MI” with “NI” and deleting “and, in Ontario, subsection 102.1(3) of the Securities Act (Ontario)” in the definition of “moratorium provisions”, and*
 - (f) *by adding the following definition:*

“NI 62-104” means National Instrument 62-104 *Take-Over Bids and Issuer Bids*;
3. *Appendix D is amended*
 - (a) *by replacing “MI 62-104” with “NI 62-104” wherever the expression occurs, and*
 - (b) *by replacing “Subsections 1(5) and 1(6) and sections 90 and 91 of the Securities Act (Ontario)” with “Subsections 1(5) and 1(6) of the Securities Act (Ontario) and sections 1.8 and 1.9 of NI 62-104”.*
4. 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
COMPANION POLICY 55-104CP INSIDER REPORTING
REQUIREMENTS AND EXEMPTIONS**

- 1. *Companion Policy 55-104CP Insider Reporting Requirements and Exemptions is changed by this document.***
- 2. *Subsection 3.2(3) is changed***
 - (a) by replacing “Multilateral” with “National”, and***
 - (b) by deleting “and in Ontario, subsection 90(1) of the Ontario Act”.***
- 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.**