

Note: [09 May 2016] – Amendments to MI 62-104 arising from NI 62-103. Refer to Annex C of the CSA Notice announcing amendments to NI 62-103 dated 25 Feb 2016.

**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.