Regulations and other acts

M.O., 2008-01

Order number V-1.1-2008-01 of the Minister of Finance dated 22 January 2008

Securities Act
(R.S.Q., c. V-1.1; 2007, c. 15)

CONCERNING Regulation 61-101 respecting protection of minority security holders in special transactions and Regulation to repeal Regulation Q-27 respecting protection of minority security holders in the course of certain transactions

WHEREAS subparagraphs 1, 3, 4, 5, 11, 21, 24 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1), amended by section 15 of chapter 15 of the statutes of 2007, stipulate that the Autorité des marchés financiers may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS the Regulation Q-27 respecting protection of minority security holders in the course of certain transactions has been made by the Authority on June 12, 2001 pursuant to decision No. 2001-C-0257;

WHEREAS there is cause to repeal this regulation;

WHEREAS the draft Regulation 61-101 respecting protection of minority security holders in special transactions and the draft Regulation to repeal Regulation Q-27 respecting protection of minority security holders in the course of certain transactions were published in the Supplément au Bulletin sur les valeurs mobilières de l'Autorité des marchés financiers, volume 3, No. 34 of August 25, 2006;

WHEREAS the Authority made, on January 17 2008, by the decision No. 2008-PDG-0004, Regulation 61-101 respecting protection of minority security holders in special transactions and, by the decision No. 2008-PDG-0005, Regulation to repeal Regulation Q-27 respecting protection of minority security holders in the course of certain transactions;

WHEREAS there is cause to approve those regulations without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation 61-101 respecting protection of minority security holders in special transactions and Regulation to repeal Regulation Q-27 respecting protection of minority security holders in the course of certain transactions appended hereto.

January 22, 2008

MONIQUE JÉRÔME-FORGET,
Minister of Finance

Regulation 61-101 respecting protection of minority security holders in special transactions

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (3), (4), (5), (11), (21), (24) and (34); 2007, c. 15)

PART 1 DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Regulation

"affected security" means

(a) for a business combination of an issuer, an equity security of the issuer in which the interest of a security holder would be terminated as a consequence of the transaction, and

(b) for a related party transaction of an issuer, an equity security of the issuer;

"affiliated entity": a person is considered to be an affiliated entity of another person if one is the subsidiary entity of the other or if both are subsidiary entities of the same person,

"arm's length" has the meaning ascribed to that term in section 251 of the Income Tax Act (R.S.C. 1985, c. 1 (5th Supp.)), or any successor to that legislation, and, in addition to that meaning, a person is deemed not to deal at arm's length with a related party of that person;

"associated entity", when used to indicate a relationship with a person, means

(a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding securities of the issuer,

(b) any partner of the person,

(c) any trust or estate in which the person has a substantial beneficial interest or in respect of which a person serves as trustee or in a similar capacity,

(d) a relative of that person, including

(i) the spouse, or

(ii) a relative of the person's spouse

if the relative has the same home as that person;

"beneficially owns" includes direct or indirect beneficial ownership of a security holder;

"bid" means a take-over bid or an issuer bid to which Part 2 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids approved by Ministerial Order No. 2008-02 dated January 22, 2008 applies, and in Ontario, a formal take-over bid or formal issuer bid as defined in section 89(1) of the Securities Act (R.S.O., c. S.5);

"bona fide lender" means a person that

(a) is an issuer insider of an issuer solely through the holding of, or the exercise of control or direction over, securities used as collateral for a debt under a written agreement entered into by the person as a lender, assignee, transferee or participant,

(b) is not yet legally entitled to dispose of the securities for the purpose of applying proceeds of realization in repayment of the secured debt, and

(c) was not a related party of the issuer at the time the agreement referred to in paragraph (a) was entered into;

"business combination" means, for an issuer, an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include

(a) an acquisition of an equity security of the issuer under a statutory right of compulsory acquisition or, if the issuer is not a corporation, under provisions substantially equivalent to those comprising section 206 of the Canada Business Corporations Act, R.S.C. 1985 c. C-44,

(b) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,

(c) a termination of a holder's interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership,

(d) a downstream transaction for the issuer, or

(e) a transaction in which no person that is a related party of the issuer at the time the transaction is agreed to

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the transaction, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per equity security that is not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general

body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"class", any class of securities, including a series of a class;

"collateral benefit", for a transaction of an issuer or for a bid for securities of an issuer, means any benefit that a related party of the issuer is entitled to receive, directly or indirectly, as a consequence of the transaction or bid, including, without limitation, an increase in salary, a lump sum payment, a payment for surrendering securities, or other enhancement in benefits related to past or future services as an employee, director or consultant of the issuer or of another person, regardless of the existence of any offsetting costs to the related party or whether the benefit is provided, or agreed to, by the issuer, another party to the transaction or the offeror in the bid, but does not include

(a) a payment or distribution per equity security that is identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(b) an enhancement of employee benefits resulting from participation by the related party in a group plan, other than an incentive plan, for employees of a successor to the business of the issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the issuer who hold positions of a similar nature to the position held by the related party, or

(c) a benefit, not described in paragraph (b), that is received solely in connection with the related party's services as an employee, director or consultant of the issuer, of an affiliated entity of the issuer or of a successor to the business of the issuer, if

(i) the benefit is not conferred for the purpose, in whole or in part, of increasing the value of the consideration paid to the related party for securities relinquished under the transaction or bid,

(ii) the conferring of the benefit is not, by its terms, conditional on the related party supporting the transaction or bid in any manner,

(iii) full particulars of the benefit are disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid, and

(iv) (A) at the time the transaction is agreed to or the bid is publicly announced, the related party and its associated entities beneficially own or exercise control or direction over less than one per cent of the outstanding securities of each class of equity securities of the issuer, or

(B) if the transaction is a business combination for the issuer or a bid for securities of the issuer,

(I) the related party discloses to an independent committee of the issuer the amount of consideration that the related party expects it will be beneficially entitled to receive, under the terms of the transaction or bid, in exchange for the equity securities beneficially owned by the related party,

(II) the independent committee, acting in good faith, determines that the value of the benefit, net of any offsetting costs to the related party, is less than five per cent of the value referred to in subclause (I), and

(III) the independent committee's determination is disclosed in the disclosure document for the transaction, or in the directors' circular in the case of a take-over bid;

"connected transactions" means two or more transactions that have at least one party in common, directly or indirectly, other than transactions related solely to services as an employee, director or consultant, and

(a) are negotiated or completed at approximately the same time, or

(b) the completion of at least one of the transactions is conditional on the completion of each of the other transactions;

"consultant" means, for an issuer, a person, other than an employee or senior officer of the issuer or of an affiliated entity of the issuer, that

(a) is engaged to provide services to the issuer or an affiliated entity of the issuer, other than services provided in relation to a distribution,

(b) provides the services under a written contract with the issuer or an affiliated entity of the issuer, and

(c) spends or will spend a significant amount of time and attention of the affairs and business of the issuer or an affiliated entity or the issuer

and includes, for an individual consultant a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner;

"convertible" means convertible into, exchangeable for, or carrying the right or obligation to purchase or otherwise acquire or cause the purchase or acquisition of, another security;

"director", for an issuer that is a limited partnership, includes a director of the general partner of the issuer, except for the purposes of the interpretation of "control";

"disclosure document" means

(a) for a take-over bid including an insider bid, a take-over bid circular sent to holders of offeree securities,

(b) for an issuer bid, an issuer bid circular sent to holders of offeree securities, and

(c) for a business combination or a related party transaction,

(i) an information circular sent to holders of affected securities,

(ii) if no information circular is required, another document sent to holders of affected securities in connection with a meeting of holders of affected securities, or

(iii) if no information circular or other document referred to in subparagraph (ii) is required, a material change report filed for the transaction;

"downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to

(a) the issuer is a control person of the related party, and

(b) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction;

"equity security" means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets;

"fair market value" means, except as provided in paragraph 6.4(2)(d), the monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act;

"formal valuation" means a valuation prepared in accordance with Part 6;

"freely tradeable" means, for securities, that

(a) the securities are transferable,

(b) the securities are not subject to any escrow requirements,

(c) the securities do not form part of the holdings of any control person,

(d) the securities are not subject to any cease trade order imposed by a securities regulatory authority,

(e) all hold periods imposed by securities legislation before the securities can be traded without a prospectus or in reliance on a prospectus exemption have expired, and

(f) any period of time imposed by securities legislation for which the issuer has to have been a reporting issuer in a jurisdiction before the securities can be traded without a prospectus or in reliance on a prospectus exemption has passed;

"incentive plan" means a group plan that provides for stock options or other equity incentives, profit sharing, bonuses, or other performance-based payments;

"independent committee" means, for an issuer, a committee consisting exclusively of one or more independent directors of the issuer;

"independent director" means, for an issuer in respect of a transaction or bid, a director who is independent as determined in section 7.1;

"independent valuator" means, for a transaction or bid, a valuator that is independent of all interested parties in the transaction, as determined in section 6.1;

"insider bid" means a take-over bid made by

(a) an issuer insider of the offeree issuer,

(b) an associated or affiliated entity of an issuer insider of the offeree issuer,

(c) an associated or affiliated entity of the offeree issuer,

(d) a person described in paragraph (a), (b) or (c) at any time within 12 months preceding the commencement of the bid, or

(e) a joint actor with a person referred to in paragraph (a), (b), (c) or (d);

"interested party" means

(a) for a take-over bid including an insider bid, the offeror or a joint actor with the offeror,

(b) for an issuer bid

(i) the issuer, and

(ii) any control person of the issuer, or any person that would reasonably be expected to be a control person of the issuer upon successful completion of the issuer bid,

(c) for a business combination, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(ii) is a party to any connected transaction to the business combination, or

(iii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) consideration per affected security that is not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless that consideration is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities, and

(d) for a related party transaction, a related party of the issuer at the time the transaction is agreed to, if the related party

(i) is a party to the transaction, unless it is a party only in its capacity as a holder of affected securities and is treated identically to the general body of holders in Canada of securities of the same class on a per security basis, or

(ii) is entitled to receive, directly or indirectly, as a consequence of the transaction

(A) a collateral benefit, or

(B) a payment or distribution made to one or more holders of a class of equity securities of the issuer if the issuer has more than one outstanding class of equity securities, unless the amount of that payment or distribution is not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities;

"issuer bid" has the meaning ascribed to that term in section 1.1 of Regulation 62104 respecting Take-Over Bids and Issuer Bids, and in Ontario, section 89(1) of the Securities Act;

"issuer insider" means, for an issuer

(a) a director or senior officer of the issuer,

(b) a director or senior officer of a person that is itself an issuer insider or subsidiary entity of the issuer, or

(c) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of the issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities;

"joint actors", when used to describe the relationship among two or more persons, means persons "acting jointly or in concert" as determined in accordance with section 1.9 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, section 91 of the Securities Act, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, but a security holder is not considered to be a joint actor with an offeror making a bid, or with a person involved in a business combination or related party transaction, solely because there is an

agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction;

"liquid market" means a market that meets the criteria specified in section 1.2;

"market capitalization" of an issuer means, for a transaction, the aggregate market price of all outstanding securities of all classes of equity securities of the issuer, the market price of the outstanding securities of a class being

(a) in the case of equity securities of a class for which there is a published market, the product of

(i) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no securities of the class were outstanding on that day, on the first business day after that day that securities of the class became outstanding, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 1.11 (1), (2) and (3) of Regulation 62104 respecting Take-Over Bids and Issuer Bids, and in Ontario, subsections 1.3 (1), (2) and (3) of Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids *(indicate the reference of the Rule)*,

(b) in the case of equity securities of a class for which there is no published market but that are currently convertible into a class of equity securities for which there is a published market, the product of

(i) the number of equity securities into which the convertible securities were convertible as of the close of business on the last business day of the calendar month preceding the calendar month in which the transaction is agreed to or, if no convertible securities were outstanding or convertible on that day, on the first business day after that day that the convertible securities became outstanding or convertible, so long as that day precedes the date the transaction is agreed to, and

(ii) the market price of the securities into which the convertible securities were convertible, at the time referred to in subparagraph (i), on the published market on which the class of securities is principally traded, as determined in accordance with subsections 1.11 (1), (2) and (3) of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, subsections 1.3 (1), (2) and (3) of Rule 62504 Take-Over Bids and Issuer Bids, and

(c) in the case of equity securities of a class not referred to in paragraph (a) or (b), the amount determined by the issuer's board of directors in good faith to represent the fair market value of the outstanding securities of that class;

"minority approval" means, for a business combination or related party transaction of an issuer, approval of the proposed transaction by a majority of the votes as specified in Part 8, cast by holders of each class of affected securities at a meeting of security holders of that class called to consider the transaction;

"offeree issuer" has the meaning ascribed to that term in section 1.1 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, section 89(1) of the Securities Act;

"offeree security" means a security that is subject to a take-over bid or issuer bid;

"offeror" has the meaning ascribed to that term in section 1.1 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, section 89(1) of the Securities Act;

"person" in Ontario, includes

(a) an individual,

(b) a corporation,

(c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

(d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"prior valuation" means a valuation or appraisal of an issuer or its securities or material assets, whether or not prepared by an independent valuator, that, if disclosed, would reasonably be expected to affect the decision of a security holder to vote for or against a transaction, or to retain or dispose of affected securities or offeree securities, other than

(a) a report of a valuation or appraisal prepared by a person other than the issuer, if

(i) the report was not solicited by the issuer, and

(ii) the person preparing the report did so without knowledge of any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(b) an internal valuation or appraisal prepared for the issuer in the ordinary course of business that has not been made available to, and has been prepared without the participation of

(i) the board of directors of the issuer, or

(ii) any director or senior officer of an interested party, except a senior officer of the issuer in the case of an issuer bid,

(c) a report of a market analyst or financial analyst that

(i) has been prepared by or for and at the expense of a person other than the issuer, an interested party, or an associated or affiliated entity of the issuer or an interested party, and

(ii) is either generally available to clients of the analyst or of the analyst's employer or of an associated or affiliated entity of the analyst's employer or, if not, is not based, so far as the person required to disclose a prior valuation is aware, on any material information concerning the issuer, its securities or any of its material assets, that had not been generally disclosed at the time the report was prepared,

(d) a valuation or appraisal prepared by a person or a person retained by that person, for the purpose of assisting the person in determining the price at which to propose a transaction that resulted in the person becoming an issuer insider, if the valuation or appraisal is not made available to any of the independent directors of the issuer, or

(e) a valuation or appraisal prepared by an interested party or a person retained by the interested party, for the purpose of assisting the interested party in determining the price at which to propose a transaction that, if pursued, would be an insider bid, business combination or related party transaction, if the valuation or appraisal is not made available to any of the independent directors of the issuer;

"published market" means, with respect to any class of securities, a market in Canada or outside of Canada on which the securities are traded, if the prices at which they have been traded on that market are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;

"related party" of an entity means a person, other than a person that is solely a bona fide lender, that, at the relevant time and after reasonable inquiry, is known by the entity or a director or senior officer of the entity to be

(a) a control person of the entity,

(b) a person of which a person referred to in paragraph (a) is a control person,

(c) a person of which the entity is a control person,

(d) a person that has

(i) beneficial ownership of, or control or direction over, directly or indirectly, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of the entity carrying more than 10% of the voting rights attached to all the entity's outstanding voting securities;

(e) a director or senior officer of

(i) the entity, or

(ii) a person described in any other paragraph of this definition,

(f) a person that manages or directs, to any substantial degree, the affairs or operations of the entity under an agreement, arrangement or understanding between the person and the entity, including the general partner of an entity that is a limited partnership, but excluding a person acting under bankruptcy or insolvency law,

(g) a person of which persons described in any paragraph of this definition beneficially own, in the aggregate, more than 50 per cent of the securities of any outstanding class of equity securities, or

(h) an affiliated entity of any person described in any other paragraph of this definition;

"related party transaction" means, for an issuer, a transaction between the issuer and a person that is a related party of the issuer at the time the transaction is agreed to, whether or not there are also other parties to

the transaction, as a consequence of which, either through the transaction itself or together with connected transactions, the issuer directly or indirectly

(a) purchases or acquires an asset from the related party for valuable consideration,

(b) purchases or acquires, as a joint actor with the related party, an asset from a third party if the proportion of the asset acquired by the issuer is less than the proportion of the consideration paid by the issuer,

(c) sells, transfers or disposes of an asset to the related party,

(d) sells, transfers or disposes of, as a joint actor with the related party, an asset to a third party if the proportion of the consideration received by the issuer is less than the proportion of the asset sold, transferred or disposed of by the issuer,

(e) leases property to or from the related party,

(f) acquires the related party, or combines with the related party, through an amalgamation, arrangement or otherwise, whether alone or with joint actors,

(g) issues a security to the related party or subscribes for a security of the related party,

(h) amends the terms of a security of the issuer if the security is beneficially owned, or is one over which control or direction is exercised, by the related party, or agrees to the amendment of the terms of a security of the related party if the security is beneficially owned by the issuer or is one over which the issuer exercises control or direction,

(i) assumes or otherwise becomes subject to a liability of the related party,

(j) borrows money from or lends money to the related party, or enters into a credit facility with the related party,

(k) releases, cancels or forgives a debt or liability owed by the related party,

(l) materially amends the terms of an outstanding debt or liability owed by or to the related party, or the terms of an outstanding credit facility with the related party, or

(m) provides a guarantee or collateral security for a debt or liability of the related party, or materially amends the terms of the guarantee or security;

"senior officer" means the chair or a vice-chair of the board of directors, a president, a vice-president, the secretary, the treasurer or the general manager of an issuer or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and for an issuer that is a limited partnership, includes a senior officer of the general partner of the issuer;

"subsidiary entity" means a person that is controlled directly or indirectly by another person and includes a subsidiary of that subsidiary;

"take-over bid" has the meaning ascribed to that term in section 1.1 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, section 89(1) of the Securities Act; and

"wholly-owned subsidiary entity": a person is considered to be a wholly-owned subsidiary entity of an issuer if the issuer owns, directly or indirectly, all the voting and equity securities and securities convertible into voting and equity securities of the person.

1.2. Liquid Market

(1) For the purposes of this Regulation, a liquid market in a class of securities of an issuer in respect of a transaction exists at a particular time only if

(a) there is a published market for the class of securities,

(i) during the period of 12 months before the date the transaction is agreed to in the case of a business combination, or 12 months before the date the transaction is publicly announced in the case of an insider bid or issuer bid

(A) the number of outstanding securities of the class was at all times at least 5,000,000, excluding securities beneficially owned, or over which control or direction was exercised, by related parties and securities that were not freely tradeable,

(B) the aggregate trading volume of the class of securities on the published market on which the class was principally traded was at least 1,000,000 securities,

(C) there were at least 1,000 trades in securities of the class on the published market on which the class was principally traded, and

(D) the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000, and

(ii) the market value of the class of securities on the published market on which the class was principally traded, as determined in accordance with subsection (2), was at least $75,000,000 for the calendar month preceding the calendar month

(A) in which the transaction is agreed to, in the case of a business combination, or

(B) in which the transaction is publicly announced, in the case of an insider bid or issuer bid; or

(b) if the test set out in paragraph (a) is not met and there is a published market for the class of securities,

(i) a person that is qualified and independent of all interested parties to the transaction, as determined on the same basis applicable to a valuator preparing a formal valuation under section 6.1, provides an opinion to the issuer that there is a liquid market in the class at the date the transaction is agreed to in the case of a business combination, or at the date the transaction is publicly announced in the case of an insider bid or issuer bid,

(ii) the opinion is included in the disclosure document for the transaction, and

(iii) the disclosure document for the transaction includes the same disclosure regarding the person providing the opinion as is required for a valuator under section 6.2.

(2) For the purpose of determining whether an issuer satisfies the market value requirement of subparagraph (1)(a)(ii), the market value of a class of securities for a calendar month is calculated by multiplying

(a) the number of securities of the class outstanding as of the close of business on the last business day of the calendar month, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable, by

(b) the arithmetic average of the closing prices of the securities of that class on the published market on which that class was principally traded for each of the trading days during the calendar month, if the published market provides a closing price for the securities, or

(c) the arithmetic average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month, if the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day.

1.3. Transactions by Wholly-Owned Subsidiary Entity

For the purposes of this Regulation, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be also a transaction of the issuer, and, for greater certainty, a bid made by a wholly-owned subsidiary entity of an issuer for securities of the issuer is deemed to be also an issuer bid made by the issuer.

1.4 Transactions by Underlying Operating Entity of Income Trust

For the purposes of this Regulation, a transaction of an underlying operating entity of an income trust within the meaning of Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings, made under decision no. 2007-PDG-0211 dated November 30, 2007, is deemed to be a transaction of the income trust, and a related party of the underlying operating entity is deemed to be a related party of the income trust.

1.5. Redeemable Securities as Consideration in Business Combination

For the purposes of this Regulation, if all or part of the consideration that holders of affected securities receive in a business combination consists of securities that are redeemed for cash within seven days of their issuance, the cash proceeds of the redemption, rather than the redeemed securities, are deemed to be consideration that the holders of the affected securities receive in the business combination.

1.6. Beneficial Ownership

(1) Despite any other provision in securities legislation, for the purposes of this Regulation,

(a) a person is deemed to own beneficially securities beneficially owned by a person it controls or by an affiliated entity of the controlled person if the affiliated entity is a subsidiary entity of the controlled person,

(b) a person is deemed to own beneficially securities beneficially owned by its affiliated entity if the affiliated entity is a subsidiary entity of the person.

(2) For the purposes of the definitions of collateral benefit, control person, downstream transaction and related party, in determining beneficial ownership, the following provisions apply:

(a) in Ontario, section 90 of the Securities Act;

(b) in Québec, section 1.8 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids.

(3) In Québec, for the purposes of this Regulation, a person that beneficially owns securities means a person that owns the securities or that holds securities registered under the name of an intermediary acting as nominee, including a trustee or agent.

1.7. Control

For the purposes of the definition of "subsidiary entity", a person controls a second person if

(a) the person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the person to elect a majority of the directors of the second person, unless the person beneficially owns or exercises control or direction over voting securities only to secure an obligation,

(b) the second person is a partnership, the person beneficially owns or exercises control or direction over more than 50 per cent of the interests in the partnership, or

(c) the second person is a limited partnership, the person is the general partner of the limited partnership or the control person of the general partner.

1.8. Entity

For the purposes of the definition of "related party", an entity has the meaning ascribed to the term "person" in section 1.1, other than an individual.

PART 2 INSIDER BIDS

2.1. Application

(1) This Part applies to a bid that is an insider bid.

(2) This Part does not apply to an insider bid in respect of which the offeror complies with National Instrument 71-101, The Multijurisdictional Disclosure System adopted pursuant to decision no. 2001-C-0248 dated June 12, 2001, unless persons whose last address as shown on the books of the offeree issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of that instrument, hold 20 per cent or more of the class of securities that is the subject of the bid.

2.2. Disclosure

(1) The offeror shall disclose in the disclosure document for an insider bid

(a) the background to the insider bid,

(b) in accordance with section 6.8, every prior valuation in respect of the offeree issuer that has been made in the 24 months before the date of the insider bid, and the existence of which is known, after reasonable inquiry, to the offeror or any director or senior officer of the offeror,

(c) the formal valuation exemption, if any, on which the offeror is relying under section 2.4 and the facts supporting that reliance, and

(d) the disclosure required by Form 62-104F2 of Regulation 62104 respecting Take-Over Bids and Issuer Bids, and in Ontario, Form 62-504F2 of Rule 62-504 Take-Over Bids and Issuer Bids, to the extent applicable and with necessary modifications.

(2) The board of directors of the offeree issuer shall include in the directors' circular for an insider bid

(a) disclosure, in accordance with section 6.8, of every prior valuation in respect of the offeree issuer not disclosed in the disclosure document for the insider bid

(i) that has been made in the 24 months before the date of the insider bid, and

(ii) the existence of which is known, after reasonable inquiry, to the offeree issuer or to any director or senior officer of the offeree issuer,

(b) a description of the background to the insider bid to the extent the background has not been disclosed in the disclosure document for the insider bid,

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the insider bid, which offer was received by the issuer during the 24 months before the insider bid was publicly announced, and a description of the offer and the background to the offer, and

(d) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the offeree issuer for the insider bid, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee.

2.3. Formal Valuation

(1) The offeror in an insider bid shall

(a) obtain, at its own expense, a formal valuation,

(b) provide the disclosure required by section 6.2,

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the insider bid, unless the formal valuation is included in its entirety in the disclosure document, and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) An independent committee of the offeree issuer shall, and the offeror shall enable the independent committee to

(a) determine who the valuator will be,

(b) supervise the preparation of the formal valuation, and

(c) use its best efforts to ensure that the formal valuation is completed and provided to the offeror in a timely manner.

2.4. Exemptions from Formal Valuation Requirement

(1) Section 2.3 does not apply to an offeror in connection with an insider bid in any of the following circumstances:

(a) neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed,

(b) all of the following conditions are satisfied:

(i) the consideration per security under the insider bid is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the offeree issuer in arm's length negotiations in connection with

(A) the making of the insider bid,

(B) one or more other transactions agreed to within 12 months before the date of the first public announcement of the insider bid, or

(C) a combination of transactions referred to in clauses (A) and (B),

(ii) at least one of the selling security holders party to an agreement referred to in clause (i)(A) or (B) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(A) at least five per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), or

(B) at least 10 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (2),

(iii) one or more of the selling security holders party to any of the transactions referred to in subparagraph (i) beneficially own or exercise control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of offeree securities, as determined in accordance with subsection (3), beneficially owned, or over which control or direction was exercised, by persons other than the person, and joint actors with the person, that entered into the agreements with the selling security holders,

(iv) the offeror reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (i)

(A) each selling security holder party to the agreement had full knowledge and access to information concerning the offeree issuer and its securities, and

(B) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by that selling security holder in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(v) at the time of each of the agreements referred to in subparagraph (i), the offeror did not know of any material information in respect of the offeree issuer or the offeree securities that

(A) had not been generally disclosed, and

(B) if generally disclosed, could have reasonably been expected to increase the agreed consideration,

(vi) if any of the agreements referred to in subparagraph (i) was entered into with a selling security holder by a person other than the offeror, the offeror reasonably believes, after reasonable inquiry, that at the time of that agreement, the person did not know of any material information in respect of the offeree issuer or the offeree securities that

(A) had not been generally disclosed, and

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(vii) the offeror does not know, after reasonable inquiry, of any material information in respect of the offeree issuer or the offeree securities since the time of each of the agreements referred to in subparagraph (i) that has not been generally disclosed and could reasonably be expected to increase the value of the offeree securities,

(c) all of the following conditions are satisfied:

(i) the insider bid is publicly announced or made while

(A) one or more bids for securities of the same class that is the subject of the insider bid have been made and are outstanding, or

(B) one or more proposed transactions are outstanding that

(I) are business combinations in respect of securities of the same class that is the subject of the insider bid and ascribe a per security value to those securities, or

(II) would be business combinations in respect of securities of the same class that is the subject of the insider bid, except that they come within the exception in paragraph (e) of the definition of business combination and ascribe a per security value to those securities,

(ii) at the time the insider bid is made, the offeree issuer has provided equal access to the offeree issuer, and to information concerning the offeree issuer and its securities, to the offeror in the insider bid, all offerors in the other bids, and all parties to the proposed transactions described in clause (i)(B),

(iii) the offeror, in the disclosure document for the insider bid,

(A) includes all material information concerning the offeree issuer and its securities that is known to the offeror after reasonable inquiry but has not been generally disclosed, together with a description of the nature of the offeror's access to the issuer, and

(B) states that the offeror does not know, after reasonable inquiry, of any material information concerning the offeree issuer and its securities other than information that has been disclosed under clause (A) or that has otherwise been generally disclosed.

(2) For the purposes of subparagraph (b)(ii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, or section 5.4 of Regulation 51-102 respecting Continuous Disclosure Obligations approved by Ministerial Order no. 2005-03 dated May 19, 2005, immediately preceding the date of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1).

(3) For the purposes of subparagraph (b)(iii) of subsection (1), the number of outstanding securities of the class of offeree securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph (b)(i) of subsection (1), if the offeror knows the number of securities of the class outstanding at that time, or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the offeree issuer in a material change report, or section 5.4 of Regulation 51-102 respecting Continuous Disclosure Obligations, immediately preceding the date of the last of the agreements referred to in subparagraph (b)(i) of subsection (1).

PART 3 ISSUER BIDS

3.1. Application

(1) This Part applies to a bid that is an issuer bid.

(2) This Part does not apply to an issuer bid that complies with National Instrument 71101, The Multijurisdictional Disclosure System, unless persons whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) to (4) of that instrument, hold 20 per cent or more of the class of securities that is the subject of the bid.

3.2. Disclosure

The issuer shall include in the disclosure document for an issuer bid

(a) a description of the background to the issuer bid,

(b) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the issuer bid, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(c) disclosure of any bona fide prior offer that relates to the offeree securities or is otherwise relevant to the issuer bid, which offer was received by the issuer during the 24 months before the issuer bid was publicly announced, and a description of the offer and the background to the offer,

(d) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the issuer bid, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(e) a statement of the intention, if known to the issuer after reasonable inquiry, of every interested party to accept or not to accept the issuer bid,

(f) a description of the effect that the issuer anticipates the issuer bid, if successful, will have on the direct or indirect voting interest in the issuer of every interested party, and

(g) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 3.4 and the facts supporting that reliance.

3.3. Formal Valuation

(1) An issuer that makes an issuer bid shall

(a) obtain a formal valuation,

(b) provide the disclosure required by section 6.2,

(c) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the issuer bid, unless the formal valuation is included in its entirety in the disclosure document,

(d) if there is an interested party other than the issuer, state in the disclosure document who will pay or has paid for the valuation, and

(e) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(2) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

3.4. Exemptions from Formal Valuation Requirement

Section 3.3 does not apply to an issuer in connection with an issuer bid in any of the following circumstances:

(a) the issuer bid is for securities that are not equity securities and that are not, directly or indirectly, convertible into equity securities,

(b) the issuer bid is made for securities for which

(i) a liquid market exists,

(ii) it is reasonable to conclude that, following the completion of the bid, there will be a market for holders of the securities who do not tender to the bid that is not materially less liquid than the market that existed at the time of the making of the bid, and

(iii) if an opinion referred to in paragraph (b) of subsection 1.2(1) is provided, the person providing the opinion reaches the conclusion described in subparagraph (b)(ii) of this section 3.4 and so states in its opinion.

PART 4 BUSINESS COMBINATIONS

4.1. Application

This Part does not apply to an issuer carrying out a business combination if

(a) the issuer is not a reporting issuer,

(b) the issuer is a mutual fund, or

(c) (i) at the time the business combination is agreed to, securities held by beneficial owners in the local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities in the local jurisdiction.

4.2. Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a business combination for which section 4.5 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a business combination shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 62-104F2 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, Form 62-504F2 of Rule 62-504 Take-Over Bids and Issuer Bids, to the extent applicable and with necessary modifications,

(b) a description of the background to the business combination,

(c) disclosure in accordance with section 6.8 of every prior valuation in respect of the issuer

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(d) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the business combination was agreed to, and a description of the offer and the background to the offer,

(e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(f) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 4.4 and the facts supporting that reliance,

(g) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the business combination is obtained, and

(h) the identity of the holders of securities specified in paragraph (g) together with their individual holdings.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the business combination or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change, and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

4.3. Formal Valuation

(1) An issuer shall obtain a formal valuation for a business combination if

(a) an interested party would, as a consequence of the transaction, directly or indirectly acquire the issuer or the business of the issuer, or combine with the issuer, through an amalgamation, arrangement or otherwise, whether alone or with joint actors, or

(b) an interested party is a party to any connected transaction to the business combination, if the connected transaction is a related party transaction for which the issuer is required to obtain a formal valuation under section 5.4.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) provide the disclosure required by section 6.2,

(b) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the business combination, unless the formal valuation is included in its entirety in the disclosure document,

(c) state in the disclosure document for the business combination who will pay or has paid for the valuation, and

(d) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

4.4. Exemptions from Formal Valuation Requirement

(1) Section 4.3 does not apply to an issuer carrying out a business combination in any of the following circumstances:

(a) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

(b) all of the following conditions are satisfied:

(i) the consideration per affected security under the business combination is at least equal in value to and is in the same form as the highest consideration agreed to with one or more selling security holders of the issuer in arm's length negotiations in connection with

(A) the business combination,

(B) one or more other transactions agreed to within 12 months before the date of the first public announcement of the business combination, or

(C) a combination of transactions referred to in clauses (A) and (B),

(ii) at least one of the selling security holders party to an agreement referred to in clause (i)(A) or (B) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell

(A) at least five per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned 80 per cent or more of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), or

(B) at least 10 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2), if the person that entered into the agreement with the selling security holder beneficially owned less than 80 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (2),

(iii) one or more of the selling security holders party to any of the transactions referred to in subparagraph (i) beneficially owns or exercises control or direction over, or beneficially owned or exercised control or direction over, and agreed to sell, in the aggregate, at least 20 per cent of the outstanding securities of the class of affected securities, as determined in accordance with subsection (3), beneficially owned or over which control or direction was exercised by persons other than the person, and joint actors with the person, that entered into the agreements with the selling security holders,

(iv) the person proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of each of the agreements referred to in subparagraph (i)

(A) each selling security holder party to the agreement had full knowledge of and access to information concerning the issuer and its securities, and

(B) any factors peculiar to a selling security holder party to the agreement, including non-financial factors, that were considered relevant by the selling security holder in assessing the consideration did not have the

effect of reducing the price that would otherwise have been considered acceptable by that selling security holder,

(v) at the time of each of the agreements referred to in subparagraph (i), the person proposing to carry out the business combination with the issuer did not know of any material information in respect of the issuer or the affected securities that

(A) had not been generally disclosed, and

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(vi) any of the agreements referred to in subparagraph (i) was entered into with a selling security holder by a person other than the person proposing to carry out the business combination with the issuer, the person proposing to carry out the business combination with the issuer reasonably believes, after reasonable inquiry, that at the time of that agreement, the person entering into the agreement with the selling security holder did not know of any material information in respect of the issuer or the affected securities that

(A) had not been generally disclosed, and

(B) if disclosed, could have reasonably been expected to increase the agreed consideration,

(vii) the person proposing to carry out the business combination with the issuer does not know, after reasonable inquiry, of any material information in respect of the issuer or the affected securities since the time of each of the agreements referred to in subparagraph (i) that has not been generally disclosed and could reasonably be expected to increase the value of the affected securities,

(c) all of the following conditions are satisfied:

(i) the business combination is publicly announced while

(A) one or more proposed transactions are outstanding that

(I) are business combinations in respect of the affected securities, and ascribe a per security value to those securities, or

(II) would be business combinations in respect of the affected securities, except that they come within the exception in paragraph (e) of the definition of business combination, and ascribe a per security value to those securities,

(B) one or more bids for the affected securities have been made and are outstanding,

(ii) at the time the disclosure document for the business combination is sent to the holders of affected securities, the issuer has provided equal access to the issuer, and to information concerning the issuer and its securities, to the person proposing to carry out the business combination with the issuer, all parties to the proposed transactions described in clause (i)(A), and all offerors in the bids,

(d) all of the following conditions are satisfied:

(i) the business combination is being effected by an offeror that made a bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(ii) the business combination is completed no later than 120 days after the date of expiry of the bid,

(iii) the consideration per security that the security holders would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the bid,

(iv) the disclosure document for the bid

(A) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in subparagraphs (ii) and (iii),

(B) described the expected tax consequences of both the bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(I) were reasonably foreseeable to the offeror, and

(II) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(C) disclosed that the tax consequences of the bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination,

(e) the issuer is a non-redeemable investment fund that

(i) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(ii) at the time of publicly announcing the business combination, publicly disseminates the net asset value of its securities as of the business day before the announcement,

(f) the transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if all of the following conditions are satisfied:

(i) the transaction does not and will not have any adverse tax or other consequences to the issuer, the person resulting from the combination, or beneficial owners of affected securities generally,

(ii) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the person resulting from the combination,

(iii) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(iv) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the person resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,

(v) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

(2) For the purposes of subparagraph (b)(ii) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1), if the person proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or section 5.4 of Regulation 51-102 respecting Continuous Disclosure Obligations, immediately preceding the date of the agreement referred to in clause (b)(i)(A) or (B) of subsection (1).

(3) For the purposes of subparagraph (b)(iii) of subsection (1), the number of outstanding securities of the class of affected securities

(a) is calculated at the time of the last of the agreements referred to in subparagraph (b)(i) of subsection (1), if the person proposing to carry out the business combination with the issuer knows the number of securities of the class outstanding at that time; or

(b) if paragraph (a) does not apply, is determined based on the information most recently provided by the issuer in a material change report, or section 5.4 of Regulation 51-102 respecting Continuous Disclosure Obligations, immediately preceding the date of the last of the agreements referred to in subparagraph (b)(i) of subsection (1).

4.5. Minority Approval

An issuer shall not carry out a business combination unless the issuer has obtained minority approval for the business combination under Part 8.

4.6. Exemptions from Minority Approval Requirement

(1) Section 4.5 does not apply to an issuer carrying out a business combination in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document for the business combination:

(a) one or more persons that are interested parties within the meaning of subparagraph (c)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time that the business combination is agreed to, and either

(i) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(ii) if an appraisal remedy referred to in subparagraph (i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in section 190 of the Canada Business Corporations Act and that is described in the disclosure document for the business combination;

(b) the circumstances described in paragraph (f) of subsection 4.4 (1).

(2) If there are two or more classes of affected securities, paragraph (a) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

4.7. Conditions for Relief from Business Corporations Act Requirements

In Ontario, an issuer that is governed by the Business Corporations Act (R.S.O. c. B.16) and proposes to carry out a "going private transaction", as defined in subsection 190(1) of this act, is exempt from subsections (2), (3) and (4) of section 190 of the OBCA, and is not required to make an application for exemption from those subsections under subsection 190(6) of the OBCA, if

(a) the transaction is not a business combination,

(b) Part 4 does not apply to the transaction by reason of section 4.1, or

(c) the transaction is carried out in compliance with Part 4, and, for this purpose, compliance includes reliance on any applicable exemption from a requirement of Part 4, including a discretionary exemption granted under section 9.1.

PART 5 RELATED PARTY TRANSACTIONS

5.1. Application

This Part does not apply to an issuer carrying out a related party transaction if

(a) the issuer is not a reporting issuer,

(b) the issuer is a mutual fund,

(c) (i) at the time the transaction is agreed to, securities held by beneficial owners in the local jurisdiction constitute less than two per cent of the outstanding securities of each class of affected securities of the issuer, and

(ii) all documents concerning the transaction that are sent generally to other holders of affected securities of the issuer are concurrently sent to all holders of the securities in the local jurisdiction,

(d) the parties to the transaction consist solely of

(i) an issuer and one or more of its wholly-owned subsidiary entities, or

(ii) wholly-owned subsidiary entities of the same issuer ,

(e) the transaction is a business combination for the issuer,

(f) the transaction would be a business combination for the issuer except that it comes within an exception in any of paragraphs (a) to (e) of the definition of business combination,

(g) the transaction is a downstream transaction for the issuer,

(h) the issuer is obligated to and carries out the transaction substantially under the terms

(i) that were agreed to, and generally disclosed, before December 15, 2000 in Québec and before May 1, 2000 in Ontario,

(ii) that were agreed to, and generally disclosed, before the issuer became a reporting issuer, or

(iii) of a previous transaction the terms of which were generally disclosed, including an issuance of a convertible security, if the previous transaction was carried out in compliance with this Regulation, including in reliance on any applicable exemption or exclusion, or was not subject to this Regulation,

(i) the transaction is a distribution

(i) of securities of the issuer and is a related party transaction for the issuer solely because the interested party is an underwriter of the distribution, and

(ii) carried out in compliance with, including in reliance on any applicable exemption from, Regulation 33-105 respecting Underwriting Conflicts approved by Ministerial Order no. 2005-14 dated August 2, 2005,

(j) the issuer is subject to the requirements of Part IX of the Loan and Trust Corporations Act (R.S.O., chapter L.25), the Act respecting Trust Companies and Savings Companies (chapter S-29.01), Part XI of the

Bank Act (Statutes of Canada, 1991, chapter 46), Part XI of the Insurance Companies Act (Statutes of Canada, 1991, chapter 47), or Part XI of the Trust and Loan Companies Act (Statutes of Canada, 1991, chapter 45), or any successor to that legislation, and the issuer complies with those requirements, or

(k) the transaction is a rights offering, dividend distribution, or any other transaction in which the general body of holders in Canada of affected securities of the same class are treated identically on a per security basis, if

(i) the transaction has no interested party within the meaning of paragraph (d) of the definition of interested party, or

(ii) the transaction is a rights offering, there is an interested party only because a related party of the issuer provides a stand-by commitment for the rights offering, and the stand-by commitment complies with Regulation 45-101 respecting Rights Offerings adopted pursuant to decision no. 2001-C-0247 dated June 12, 2001.

5.2. Material Change Report

(1) An issuer shall include in a material change report, if any, required to be filed under securities legislation for a related party transaction

(a) a description of the transaction and its material terms,

(b) the purpose and business reasons for the transaction,

(c) the anticipated effect of the transaction on the issuer's business and affairs,

(d) a description of

(i) the interest in the transaction of every interested party and of the related parties and associated entities of the interested parties, and

(ii) the anticipated effect of the transaction on the percentage of securities of the issuer, or of an affiliated entity of the issuer, beneficially owned or controlled by each person referred to in subparagraph (i) for which there would be a material change in that percentage,

(e) unless this information will be included in another disclosure document for the transaction, a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(f) a summary, in accordance with section 6.5, of the formal valuation, if any, obtained for the transaction, unless the formal valuation is included in its entirety in the material change report or will be included in its entirety in another disclosure document for the transaction,

(g) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the material change report, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(h) the general nature and material terms of any agreement entered into by the issuer, or a related party of the issuer, with an interested party or a joint actor with an interested party, in connection with the transaction, and

(i) disclosure of the formal valuation and minority approval exemptions, if any, on which the issuer is relying under sections 5.5 and 5.7, respectively, and the facts supporting reliance on the exemptions.

(2) If the issuer files a material change report less than 21 days before the expected date of the closing of the transaction, the issuer shall explain in the news release required to be issued under Regulation 51-102 respecting Continuous Disclosure Obligations and in the material change report why the shorter period is reasonable or necessary in the circumstances.

(3) Despite paragraphs (1)(f) and 5.4(2)(a), if the issuer is required to include a summary of the formal valuation in the material change report and the formal valuation is not available at the time the issuer files the material change report, the issuer shall file a supplementary material change report containing the disclosure required by paragraph (1)(f) as soon as the formal valuation is available.

(4) The issuer shall send a copy of any material change report prepared by it in respect of the transaction to any security holder of the issuer upon request and without charge.

5.3. Meeting and Information Circular

(1) Without limiting the application of any other legal requirements that apply to meetings of security holders and information circulars, this section applies only to a related party transaction for which section 5.6 requires the issuer to obtain minority approval.

(2) An issuer proposing to carry out a related party transaction to which this section applies shall call a meeting of holders of affected securities and send an information circular to those holders.

(3) The issuer shall include in the information circular

(a) the disclosure required by Form 62-104F2 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, Form 62-504F2 of Rule 62-504 Take-Over Bids and Issuer Bids, to the extent applicable and with necessary modifications,

(b) a description of the background to the transaction,

(c) disclosure, in accordance with section 6.8, of every prior valuation in respect of the issuer that relates to the subject matter of or is otherwise relevant to the transaction

(i) that has been made in the 24 months before the date of the information circular, and

(ii) the existence of which is known, after reasonable inquiry, to the issuer or to any director or senior officer of the issuer,

(d) disclosure of any bona fide prior offer that relates to the subject matter of or is otherwise relevant to the transaction, which offer was received by the issuer during the 24 months before the transaction was agreed to, and a description of the offer and the background to the offer,

(e) a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee,

(f) disclosure of the formal valuation exemption, if any, on which the issuer is relying under section 5.5 and the facts supporting that reliance,

(g) disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained, and

(h) the identity of the holders of securities specified in paragraph (g) together with their individual holdings.

(4) If, after sending the information circular and before the meeting, a change occurs that, if disclosed, would reasonably be expected to affect the decision of a holder of affected securities to vote for or against the related party transaction or to retain or dispose of affected securities, the issuer shall promptly disseminate disclosure of the change

(a) in a manner that the issuer reasonably determines will inform beneficial owners of affected securities of the change, and

(b) sufficiently in advance of the meeting that the beneficial owners of affected securities will be able to assess the impact of the change.

(5) If subsection (4) applies, the issuer shall file a copy of the disseminated information contemporaneously with its dissemination.

5.4. Formal Valuation

(1) An issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

(2) If a formal valuation is required under subsection (1), the issuer shall

(a) include, in accordance with section 6.5, a summary of the formal valuation in the disclosure document for the related party transaction, unless the formal valuation is included in its entirety in the disclosure document,

(b) state in the disclosure document who will pay or has paid for the valuation, and

(c) comply with the other provisions of Part 6 applicable to it relating to formal valuations.

(3) The board of directors of the issuer or an independent committee of the board shall

(a) determine who the valuator will be, and

(b) supervise the preparation of the formal valuation.

5.5. Exemptions from Formal Valuation Requirement

Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

(a) at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, insofar as it involves interested parties, exceeds 25 per cent of the issuer's market capitalization, and for this purpose

(i) if either of the fair market values is not readily determinable, any determination as to whether that fair market value exceeds the threshold for this exemption shall be made by the issuer's board of directors acting in good faith,

(ii) if the transaction is one in which the issuer or a wholly-owned subsidiary entity of the issuer combines with a related party, through an amalgamation, arrangement or otherwise, the subject matter of the transaction shall be deemed to be the securities of the related party held, at the time the transaction is agreed to, by persons other than the issuer or a wholly-owned subsidiary entity of the issuer, and the consideration for the transaction shall be deemed to be the consideration received by those persons,

(iii) if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemption in this paragraph (a), require formal valuations under this Regulation, the fair market values for all of those transactions shall be aggregated in determining whether the tests for this exemption are met, and

(iv) if the assets involved in the transaction (the "initial transaction") include warrants, options or other instruments providing for the possible future purchase of securities or other assets (the "future transaction"), the calculation of the fair market value for the initial transaction shall include the fair market value, as of the time the initial transaction is agreed to, of the maximum number of securities or other consideration that the issuer may be required to issue or pay in the future transaction,

(b) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

(c) the transaction is a distribution of securities of the issuer to a related party for cash consideration, if

(i) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the related party has knowledge of any material information concerning the issuer or its securities that has not been generally disclosed, and the disclosure document for the transaction includes a statement to that effect, and

(ii) the disclosure document for the transaction includes a description of the effect of the distribution on the direct or indirect voting interest of the related party,

(d) the transaction is

(i) a purchase or sale, in the ordinary course of business of the issuer, of inventory consisting of personal or movable property under an agreement that has been approved by the board of directors of the issuer and the existence of which has been generally disclosed, or

(ii) a lease of real or immovable property or personal or movable property under an agreement on reasonable commercial terms that, considered as a whole, are not less advantageous to the issuer than if the lease was with a person dealing at arm's length with the issuer and the existence of which has been generally disclosed,

(e) the interested party beneficially owns, or exercises control or direction over, voting securities of the issuer that carry fewer voting rights than the voting securities beneficially owned, or over which control or direction is exercised, by another security holder of the issuer who is a control person of the issuer and who, in the circumstances of the transaction

(i) is not also an interested party,

(ii) is at arm's length to the interested party, and

(iii) supports the transaction,

(f) all of the following conditions are satisfied:

(i) the transaction is subject to court approval, or a court orders that the transaction be effected, under

(A) bankruptcy or insolvency law, or

(B) section 191 of the Canada Business Corporations Act, any successor to that section, or equivalent legislation of a jurisdiction,

(ii) the court is advised of the requirements of this Regulation regarding formal valuations for related party transactions, and of the provisions of this paragraph (f), and

(iii) the court does not require compliance with section 5.4,

(g) all of the following conditions are satisfied:

(i) the issuer is insolvent or in serious financial difficulty,

(ii) the transaction is designed to improve the financial position of the issuer,

(iii) paragraph (f) is not applicable,

(iv) the issuer has one or more independent directors in respect of the transaction, and

(v) the issuer's board of directors, acting in good faith, determines, and at least two-thirds of the issuer's independent directors, acting in good faith, determine that

(A) subparagraphs (i) and (ii) apply, and

(B) the terms of the transaction are reasonable in the circumstances of the issuer,

(h) all of the following conditions are satisfied:

(i) the subject matter of the related party transaction was acquired by the issuer or an interested party, as the case may be, in a prior arm's length transaction that was agreed to not more than 12 months before the date that the related party transaction is agreed to, and a qualified, independent valuator provides a written opinion that, after making such adjustments, if any, as the valuator considers appropriate in the exercise of the valuator's professional judgment

(A) the value of the consideration payable by the issuer for the subject matter of the related party transaction is not more than the value of the consideration paid by the interested party in the prior arm's length transaction, or

(B) the value of the consideration to be received by the issuer for the subject matter of the related party transaction is not less than the value of the consideration paid by the issuer in the prior arm's length transaction, and

(ii) the disclosure document for the related party transaction includes the same disclosure regarding the valuator as is required in the case of a formal valuation under section 6.2,

(i) the issuer is a non-redeemable investment fund that

(i) at least once each quarter calculates and publicly disseminates the net asset value of its securities, and

(ii) at the time of publicly announcing the related party transaction, publicly disseminates the net asset value of its securities as of the business day before the announcement,

(j) the transaction is a statutory amalgamation, or substantially equivalent transaction, resulting in the combination of the issuer or a wholly-owned subsidiary entity of the issuer with an interested party, that is undertaken in whole or in part for the benefit of another related party, if all of the following conditions are satisfied:

(i) the transaction does not and will not have any adverse tax or other consequences to the issuer, the person resulting from the combination, or beneficial owners of affected securities generally,

(ii) no material actual or contingent liability of the interested party with which the issuer or a wholly-owned subsidiary entity of the issuer is combining will be assumed by the issuer, the wholly-owned subsidiary entity of the issuer or the person resulting from the combination,

(iii) the related party benefiting from the transaction agrees to indemnify the issuer against any liabilities of the interested party with which the issuer, or a wholly-owned subsidiary entity of the issuer, is combining,

(iv) after the transaction, the nature and extent of the voting and financial participating interests of holders of affected securities in the person resulting from the combination will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the issuer before the transaction,

(v) the related party benefiting from the transaction pays for all of the costs and expenses resulting from the transaction.

5.6. Minority Approval

An issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7. Exemptions from Minority Approval Requirement

(1) Section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

(a) the circumstances described in paragraph (a) of section 5.5,

(b) the circumstances described in paragraph (c) of section 5.5, if

(i) no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

(ii) at the time the transaction is agreed to, neither the fair market value of the securities to be distributed in the transaction nor the consideration to be received for those securities, insofar as the transaction involves interested parties, exceeds $2,500,000,

(iii) the issuer has one or more independent directors in respect of the transaction who are not employees of the issuer, and

(iv) at least two-thirds of the directors described in subparagraph (iii) approve the transaction,

(c) the circumstances described in paragraphs (d), (e) and (j) of section 5.5,

(d) the circumstances described in subparagraph (f)(i) of section 5.5, if the court is advised of the requirements of this Regulation regarding minority approval for related party transactions, and of the provisions of this paragraph, and the court does not require compliance with section 5.6,

(e) the circumstances described in paragraph (g) of section 5.5, if there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities,

(f) the following provisions apply:

(i) the transaction is a loan, or the creation of a credit facility, that is obtained by the issuer from a related party on reasonable commercial terms that are not less advantageous to the issuer than if the loan or credit facility were obtained from a person dealing at arm's length with the issuer, and the loan, or each advance under the credit facility, as the case may be, is not

(A) convertible, directly or indirectly, into equity or voting securities of the issuer or a subsidiary entity of the issuer, or otherwise participating in nature, or

(B) repayable as to principal or interest, directly or indirectly, in equity or voting securities of the issuer or a subsidiary entity of the issuer,

(ii) and for this purpose, any amendment to the terms of a loan or credit facility is deemed to create a new loan or credit facility,

(g) one or more persons that are interested parties within the meaning of subparagraph (d)(i) of the definition of interested party beneficially own, in the aggregate, 90 per cent or more of the outstanding securities of a class of affected securities at the time the transaction is agreed to, and either

(i) an appraisal remedy is available to holders of the class of affected securities under the statute under which the issuer is organized or is governed as to corporate law matters, or

(ii) if an appraisal remedy referred to in subparagraph (i) is not available, holders of the class of affected securities are given an enforceable right that is substantially equivalent to the appraisal remedy provided for in section 190 of the Canada Business Corporations Act and that is described in an information circular or other document sent to holders of that class of affected securities in connection with a meeting to approve the related party transaction, or, if there is no such meeting, in another document that is sent to those security holders not later than the time by which an information circular or other document would have been required to be sent to them if there had been a meeting.

(2) Despite subparagraph (a)(iii) of section 5.5, if the transaction is one of two or more connected transactions that are related party transactions and would, without the exemptions in paragraphs (a) and (b) of subsection (1), require minority approval under this Regulation, the fair market values for all of those transactions shall be aggregated in determining whether the tests for those exemptions are met.

(3) If the transaction is a material amendment to the terms of a security, or of a loan or credit facility to which the exemption in paragraph (f) of subsection (1) does not apply, the fair market value tests for the exemptions in paragraphs (a) and (b) of subsection (1) shall be applied to the whole transaction as amended, insofar as it involves interested parties, rather than just to the amendment, and, for this purpose, any addition of, or amendment to, a term involving a right to convert into or otherwise acquire equity or voting securities is deemed to be a material amendment.

(4) Subparagraphs (a)(i), (iii) and (iv) of section 5.5 apply to paragraph (b) of subsection 5.7(1) with appropriate modifications.

(5) If there are two or more classes of affected securities, paragraph (g) of subsection (1) applies only to a class of which the applicable interested parties beneficially own, in the aggregate, 90 per cent or more of the outstanding securities.

PART 6 FORMAL VALUATIONS AND PRIOR VALUATIONS

6.1. Independence and Qualifications of Valuator

(1) Every formal valuation required by this Regulation for a transaction shall be prepared by a valuator that is independent of all interested parties in the transaction and that has appropriate qualifications.

(2) It is a question of fact as to whether a valuator is independent of an interested party or has appropriate qualifications.

(3) A valuator is not independent of an interested party in connection with a transaction if

(a) the valuator is an associated or affiliated entity or issuer insider of the interested party,

(b) except in the circumstances described in paragraph (e), the valuator acts as an adviser to the interested party in respect of the transaction, but for this purpose, a valuator that is retained by an issuer to prepare a formal valuation for an issuer bid is not, for that reason alone, considered to be an adviser to the interested party in respect of the transaction,

(c) the compensation of the valuator depends in whole or in part on an agreement, arrangement or understanding that gives the valuator a financial incentive in respect of the conclusion reached in the formal valuation or the outcome of the transaction,

(d) the valuator is

(i) a manager or co-manager of a soliciting dealer group for the transaction, or

(ii) a member of a soliciting dealer group for the transaction, if the valuator, in its capacity as a soliciting dealer, performs services beyond the customary soliciting dealer's function or receives more than the per security or per security holder fees payable to other members of the group,

(e) the valuator is the external auditor of the issuer or of an interested party, unless the valuator will not be the external auditor of the issuer or of an interested party upon completion of the transac"tion and that fact is publicly disclosed at the time of or prior to the public disclosure of the results of the valuation, or

(f) the valuator has a material financial interest in the completion of the transaction,

and for the purposes of this subsection, references to the valuator include any affiliated entity of the valuator.

(4) A valuator that is paid by one or more interested parties in a transaction, or paid jointly by the issuer and one or more interested parties in a transaction, to prepare a formal valuation for the transaction is not, by virtue of that fact alone, not independent.

6.2. Disclosure Regarding Valuator

An issuer or offeror required to obtain a formal valuation for a transaction shall include in the disclosure document for the transaction

(a) a statement that the valuator has been determined to be qualified and independent,

(b) a description of any past, present or anticipated relationship between the valuator and the issuer or an interested party that may be relevant to a perception of lack of independence,

(c) a description of the compensation paid or to be paid to the valuator,

(d) a description of any other factors relevant to a perceived lack of independence of the valuator,

(e) the basis for determining that the valuator is qualified, and

(f) the basis for determining that the valuator is independent, despite any perceived lack of independence, having regard to the amount of the compensation and any factors referred to in paragraphs (b) and (d).

6.3. Subject Matter of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation shall provide the valuation in respect of

(a) the offeree securities, in the case of an insider bid or issuer bid,

(b) the affected securities, in the case of a business combination,

(c) any non-cash consideration being offered to, or to be received by, the holders of securities referred to in paragraph (a) or (b), and

(d) the non-cash assets involved in a related party transaction.

(2) A formal valuation of non-cash consideration or assets referred to in paragraph (1)(c) or (d) is not required if

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market,

(b) the person that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed,

(c) in the case of an insider bid, issuer bid or business combination

(i) a liquid market in the class of securities exists,

(ii) the securities constitute 25 per cent or less of the number of securities of the class that are outstanding immediately before the transaction,

(iii) the securities are freely tradeable at the time the transaction is completed, and

(iv) the valuator is of the opinion that a valuation of the securities is not required, and

(d) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs (c)(i) and (ii) of section 5.5 are satisfied, regardless of the form of the consideration for the securities.

6.4. Preparation of Formal Valuation

(1) A formal valuation shall contain the valuator's opinion as to a value or range of values representing the fair market value of the subject matter of the valuation.

(2) A person preparing a formal valuation under this Regulation shall

(a) prepare the formal valuation in a diligent and professional manner,

(b) prepare the formal valuation as of an effective date that is not more than 120 days before the earlier of

(i) the date that the disclosure document for the transaction is first sent to security holders, if applicable, and

(ii) the date that the disclosure document is filed,

(c) make appropriate adjustments in the formal valuation for material intervening events of which it is aware between the effective date of the valuation and the earlier of the dates referred to in subparagraphs (i) and (ii) of paragraph (b),

(d) in determining the fair market value of offeree securities or affected securities, not include in the formal valuation a downward adjustment to reflect the liquidity of the securities, the effect of the transaction on the securities or the fact that the securities do not form part of a controlling interest, and

(e) provide sufficient disclosure in the formal valuation to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

6.5. Summary of Formal Valuation

(1) An issuer or offeror required to provide a summary of a formal valuation shall ensure that the summary provides sufficient detail to allow the readers to understand the principal judgments and principal underlying reasoning of the valuator so as to form a reasoned judgment of the valuation opinion or conclusion.

(2) In addition to the disclosure referred to in subsection (1), if an issuer or offeror is required to provide a summary of a formal valuation, the issuer or offeror shall ensure that the summary

(a) discloses

(i) the effective date of the valuation, and

(ii) any distinctive material benefit that might accrue to an interested party as a consequence of the transaction, including the earlier use of available tax losses, lower income taxes, reduced costs or increased revenues,

(b) if the formal valuation differs materially from a prior valuation, explains the differences between the two valuations or, if it is not practicable to do so, the reasons why it is not practicable to do so,

(c) indicates an address where a copy of the formal valuation is available for inspection, and

(d) states that a copy of the formal valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

6.6. Filing of Formal Valuation

(1) An issuer or offeror required to obtain a formal valuation in respect of a transaction shall file a copy of the formal valuation

(a) concurrently with the sending of the disclosure document for the transaction to security holders, or

(b) concurrently with the filing of a material change report for a related party transaction for which no disclosure document is sent to security holders, or if the formal valuation is not available at the time of filing the material change report, as soon as the formal valuation is available.

(2) If the formal valuation is included in its entirety in the disclosure document, an issuer or offeror satisfies the requirement in subsection (1) by filing the disclosure document.

6.7. Valuator's Consent

An issuer or offeror required to obtain a formal valuation shall

(a) obtain the valuator's consent to the filing of the formal valuation and to the inclusion of the formal valuation or its summary in the disclosure document for the transaction for which the formal valuation was obtained, and

(b) include in the disclosure document a statement, signed by the valuator, substantially as follows:

"*We refer to the formal valuation dated, which we prepared for (indicate name of the person) for (briefly describe the transaction for which the formal valuation was prepared). We consent to the filing of the formal valuation with the securities regulatory authority and the inclusion of [a summary of the formal valuation/the formal valuation] in this document.*".

6.8. Disclosure of Prior Valuation

(1) A person required to disclose a prior valuation shall, in the document in which the prior valuation is required to be disclosed

(a) disclose sufficient detail to allow the readers to understand the prior valuation and its relevance to the present transaction,

(b) indicate an address where a copy of the prior valuation is available for inspection, and

(c) state that a copy of the prior valuation will be sent to any security holder upon request and without charge or, if the issuer or offeror providing the summary so chooses, for a nominal charge sufficient to cover printing and postage.

(2) If there are no prior valuations, the existence of which is known after reasonable inquiry, the person that would be required to disclose prior valuations, if any existed, shall include a statement to that effect in the document.

(3) Despite anything to the contrary in this Regulation, disclosure of the contents of a prior valuation is not required in a document if

(a) the contents are not known to the person required to disclose the prior valuation,

(b) the prior valuation is not reasonably obtainable by the person required to disclose it, irrespective of any obligations of confidentiality, and

(c) the document contains statements regarding the prior valuation substantially to the effect of paragraphs (a) and (b).

6.9. Filing of Prior Valuation

A person required to disclose a prior valuation shall file a copy of the prior valuation concurrently with the filing of the first document in which that disclosure is required.

6.10. Consent of Prior Valuator Not Required

Despite sections 2.15 and 2.21 of Regulation 62-104 respecting Take-Over Bids and Issuer Bids, and in Ontario, sections 94.7 and 96.1 of the Securities Act, a

person required to disclose a prior valuation under this Regulation is not required to obtain or file the valuator's consent to the filing or disclosure of the prior valuation.

PART 7 INDEPENDENT DIRECTORS

7.1. Independent Directors

(1) For the purposes of this Regulation, it is a question of fact as to whether a director of an issuer is independent.

(2) A director of an issuer is not independent in connection with a transaction if the director

(a) is an interested party in the transaction,

(b) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an employee, associated entity or issuer insider of an interested party, or of an affiliated entity of an interested party, other than solely in his or her capacity as a director of the issuer,

(c) is currently, or has been at any time during the 12 months before the date the transaction is agreed to, an adviser to an interested party in connection with the transaction, or an employee, associated entity or issuer insider of an adviser to an interested party in connection with the transaction, or of an affiliated entity of such an adviser, other than solely in his or her capacity as a director of the issuer,

(d) has a material financial interest in an interested party or an affiliated entity of an interested party, or

(e) would reasonably be expected to receive a benefit as a consequence of the transaction that is not also available on a pro rata basis to the general body of holders in Canada of offeree securities or affected securities, including, without limitation, the opportunity to obtain a financial interest in an interested party, an affiliated entity of an interested party, the issuer or a successor to the business of the issuer.

(3) A member of an independent committee for a transaction to which this Regulation applies shall not receive any payment or other benefit from an issuer, an interested party or a successor to any of them that is contingent upon the completion of the transaction.

(4) For the purposes of this section, in the case of an issuer bid, a director of the issuer is not, by that fact alone, not independent of the issuer.

PART 8 MINORITY APPROVAL

8.1. General

(1) If minority approval is required for a business combination or related party transaction, it shall be obtained from the holders of every class of affected securities of the issuer, in each case voting separately as a class.

(2) In determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or senior officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by

(a) the issuer,

(b) an interested party,

(c) a related party of an interested party, unless the related party meets that description solely in its capacity as a director or senior officer of one or more persons that are neither interested parties nor issuer insiders of the issuer, or

(d) a joint actor with a person referred to in paragraph (b) or (c) in respect of the transaction.

8.2. Second Step Business Combination

Despite subsection 8.1(2), the votes attached to securities acquired under a bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid,

(b) the security holder that tendered the securities to the bid was not

(i) a direct or indirect party to any connected transaction to the bid, or

(ii) entitled to receive, directly or indirectly, in connection with the bid

(A) consideration per offeree security that was not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities,

(c) the business combination is being effected by the offeror that made the bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(d) the business combination is completed no later than 120 days after the date of expiry of the bid,

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the bid, and

(f) the disclosure document for the bid

(i) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) disclosed the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified the holders of securities specified in subparagraph (iv) and set out their individual holdings,

(vi) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

(vii) described the expected tax consequences of both the bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(viii) disclosed that the tax consequences of the bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

PART 9 EXEMPTION

9.1. Exemption

(1) The regulator, other than in Québec, or the securities regulatory authority may grant an exemption to this Regulation, in whole or in part, subject to those conditions or restrictions as may be imposed in the exemption. In Québec, this exemption is granted under section 263 of the Securities Act (R.S.Q. V-1.1)

(2) Despite paragraph (1), in Ontario, the regulator may grant such an exemption.

PART 10 EFFECTIVE DATE

10.1. Effective Date

This Regulation comes into force on February 1, 2008.

Regulation to repeal Regulation Q-27 respecting protection of minority security holders in the course of certain transactions *

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (24); 2007, c. 15)

1. Regulation Q-27 respecting Protection of Minority Security holders in the Course of Certain Transactions is repealed.

2. This Regulation comes into force on February 1, 2008.

8542

M.O., 2008

Order number V-1.1-2008-03 of the Minister of Finance, dated 22 January 2008

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING Regulation to amend Regulation 62-103 respecting the early warning system and related take-over bid and insider reporting issues and Regulation to amend the Securities Regulation

WHEREAS subparagraphs 1, 8, 21, 22, 23, 32.1 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1), amended by section 15 of chapter 15 of the statutes of 2007, stipulate that the Autorité des marchés financiers may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS the Regulation 62-103 respecting the early warning system and related take-over bid and insider reporting issues has been made on March 18, 2003 pursuant to decision No. 2003-C-0109;

WHEREAS the government, by order-in-council no. 660-83 of March 30, 1983, enacted the Securities Regulation (1983, *G.O.* 2, 1269);

WHEREAS there is cause to amend those regulations;

WHEREAS the draft Regulation to amend Regulation 62-103 respecting the early warning system and related take-over bid and insider reporting issues was published in the Supplément au Bulletin sur les valeurs mobilières de l'Autorité des marchés financiers, volume 3, No. 17 of April 28, 2006;

WHEREAS the draft Regulation to amend the Securities Regulation was published in the Bulletin de l'Autorité des marchés financiers, volume 4, No. 45 of November 9, 2007 and volume 4, No. 48 of November 30, 2007;

WHEREAS the Authority made, on January 17 2008, by the decision No. 2008-PDG-0008, Regulation to amend Regulation 62-103 respecting the early warning system and related take-over bid and insider reporting issues and, by the decision No. 2008-PDG-0010, Regulation to amend the Securities Regulation;

WHEREAS there is cause to approve those regulations without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation to amend Regulation 62-103 respecting the early warning system and related take-over bid and insider reporting issues and Regulation to amend the Securities Regulation appended hereto.

January 22, 2008

MONIQUE JÉRÔME-FORGET,
Minister of Finance

* Regulation Q-27 respecting Protection of Minority Securityholders in the Course of Certain Transactions, adopted on June 12, 2001 pursuant to decision No. 2001-C-0257 and published in the Supplement to the Bulletin of the *Commission des valeurs mobilières du Québec*, vol. 32, No. 25, dated June 22, 2001, was amended solely by the Regulation to amend Policy Statement Q-27, Protection of Minority Securityholders in the Course of Certain Transactions, approved by Ministerial Order No. 2005-17 dated August 2, 2005 (2005, *G.O.* 2, 3523).