

December 20, 2024

Mr. Stan Magidson
Chair, Canadian Securities Administrators (CSA), and
Chair and Chief Executive Officer
Alberta Securities Commission
Suite 600, 250 - 5th Street SW
Calgary, AB

Via Email: Stan.Magidson@asc.ca

Dear Mr. Magidson:

Re: Standardizing and Enhancing Normal Course Issuer Bids

The Investment Industry Association of Canada (“IIAC”) is the national association representing investment firms that provide products and services to Canadian retail and institutional investors. Our members manufacture and distribute a variety of securities including ETFs, mutual funds, closed-end funds, and other exempt products.

We write with respect to National Instrument 62-104, *Take-Over Bids and Issuer Bids* (“NI 62-104”) and National Policy 62-203, *Take-Over Bids and Issuer Bids* (“NP 62-203”). In particular, we write to propose amendments to the normal course issuer bid (“NCIB”) exemptions in NI 62-104 and related commentary in NP 62-203 to streamline and simplify NCIB requirements across all exchanges in Canada.

Overview

Normal course issuer bids are a valuable tool for public issuing companies and investors. For example, NCIBs allow companies to demonstrate confidence in the intrinsic value of their shares potentially leading to a re-evaluation of the stock for the benefit of shareholders, improve financial metrics for shareholders, exercise flexibility in capital structure, increase liquidity, and offset share dilution. The NCIB exemptions in NI 62-104 are critically important to issuers in that they provide an alternative to the costly and often complicated issuer bid process prescribed by Part 2 of NI 62-104.

However, the requirements that must be satisfied in order to rely on the NCIB exemptions in NI 62-104 differ depending on the marketplace on which the NCIB is completed. This has contributed to a fragmented NCIB regime that creates avoidable obstacles for issuers.

For the reasons set out below, we submit that NI 62-104 ought to be amended to establish common NCIB rules for all exchanges in Canada.

The Normal Course Issuer Bid Exemption

As you are aware, Part 2 of NI 62-104 includes a series of rules and requirements that apply to issuer bids including time limits, notice requirements, and prohibitions on the issuer's sale/purchase of securities during the bid period. Importantly, Division 2 of Part 4 of NI 62-104 includes the NCIB exemption, which relieves issuers from the issuer bid requirements found in Part 2 of NI 62-104 where the bid is completed in the normal course.

Specifically, s. 4.8(2) of Part 4 currently provides that an issuer bid is exempt from Part 2 if the bid is made in the normal course through and in accordance with the bylaws, rules, regulations, and policies of a "designated exchange". However, there is a notable disparity between the detailed NCIB rules found in the TSX Company Manual and the less comprehensive rules that have been adopted by other exchanges. Moreover, there have been substantial market changes in Canada since the creation of the TSX's NCIB rules in or around 2005. Complicating matters further, there are notable differences between the buyback rules that apply to exchanges in the United States and the NCIB rules that have been adopted by exchanges in Canada.

Recommendations

We recommend that the CSA amend NI 62-104 and NP 62-203 to create a common set of NCIB rules across all exchanges in Canada. In particular, we recommend that the NCIB requirements found in NI 62-104 be replaced with a single set of rules across all Canadian exchanges based on the current requirements set out in the TSX Company Manual, with revisions to improve the competitiveness of Canadian exchanges. This will simplify the existing NCIB regime and allow for more flexibility among issuers in planning for the repurchase of securities.

Our proposed amendments are summarized as follows:

- 1) Subsections 4.8(1), (2), and (4) of Part 2, Division 2, of NI 62-104 should be rescinded to eliminate the requirement for issuers to comply with the discrete bylaws, rules, and policies of different "designated exchanges"; and
- 2) Subsections 4.8(2) and (4) of Part 2, Division 2, of NI 62-104 should be replaced with a set of rules for all Canadian exchanges based in substance on the NCIB requirements found in section 628 and 629 of the TSX Company Manual, with the following variations:
 - a) **Definition of "Issuer Bid"**: The definitions of "issuer bid" found in the TSX Company Manual and NI 62-104 should be combined to provide for a common definition across all exchanges.
 - b) **Definition of "average daily trading volume"**: The definition of "average trading volume" found in the TSX Company Manual¹ should be revised to account for trading volume on all marketplaces to allow for a more complete measure of a security's trading volume. In addition, average daily trading volume ought to be measured over a four-week rolling period rather than the 6-month

¹ S. 628(a)(i).

static period currently contemplated in the TSX Company Manual. This revised calculation will be used to determine the daily purchase limit which will more accurately reflect the liquidity of securities at the time of purchase and contribute to more competitive marketplaces in Canada by matching the rules adopted by exchanges in the United States.²

- c) **Definition of “normal course issuer bid”:** Similarly, the definition of “normal course issuer bid”³ found in the TSX Company Manual should be adopted in a revised form to account for trading on all marketplaces. This will allow for a more complete measure of trading activity.
 - d) **Restrictions on Acquisitions at Opening and Closing:** The current restrictions found in the TSX Company Manual⁴ should be amended to allow NCIBs to be completed up to 10 minutes before closing as opposed to the current 30-minute restriction. This will assist in achieving best execution and, again, improve the competitiveness of Canada’s marketplaces by matching the rules adopted by exchanges in the United States.⁵ In addition, we recommend that the rules from the TSX Company Manual that are adopted into NI 62-104 be amended to remove the current prohibition against completing block purchases at the opening of a trading session.
 - e) **Block Purchase Exception:** The block purchase exception currently in the TSX Company Manual⁶ should be revised to allow for one block purchase per calendar day rather than one per week. Relatedly, NP 62-203 should be amended to clearly specify that combining or bundling blocks is permitted and that the block purchase exception is not limited to “naturally occurring blocks”.⁷ This TSX restriction, which preferences one investor over another, is inconsistent with current market practice and can unintentionally disclose the nature of the buyer. More generally, this requirement is unduly restrictive given the relatively limited liquidity of Canadian listed issuers compared to US listed issuers.
 - f) **Sales from Insiders:** The current restrictions in the TSX Company Manual on NCIB sales from a control person of an issuer should be amended to allow for an exemption process for sales up to 25% of an insider block subject to the existing reporting obligations for insider trades.⁸ The exemption process and issuer reporting obligations should sufficiently mitigate any concerns related to market manipulation.
- 3) The NCIB requirements currently found in s. 4.8(3) and (5) of Part 2, Division 2, of NI 62-104 would continue to apply to all published markets other than Canadian exchanges.

We have prepared a draft of our proposed amendments to NI 62-104 and NP 62-203, which are attached hereto at **Schedule “A”** and **Schedule “B”**.

² SEC Rule 240.10b-18, s.2(a)(1).

³ S. 628(a)(ix).

⁴ S. 629(l)(8).

⁵ SEC Rule 240.10b-18, s.2(b)(2)(ii).

⁶ S. 629(l)(7).

⁷ [TSX Staff Notice 2022-0001](#).

⁸ S. 629(l)(4).

We recognize that, in order to implement and harmonize our proposed amendments across marketplaces in Canada, all such exchanges will be required to amend their manuals and related documents and have therefore included them in this correspondence.

We would be pleased to discuss at your convenience.

Sincerely,

Investment Industry Association of Canada

CC:

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