

# TSX INC. NOTICE

## **APPROVAL OF AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE: PART 6 – EXCHANGE TAKE-OVER BIDS AND EXCHANGE ISSUER BIDS**

### Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (Protocol) between the Ontario Securities Commission (OSC) and TSX Inc. (TSX), TSX has adopted and the OSC has approved certain amendments (Amendments) to Part 6 of the Rules of the Toronto Stock Exchange (Rule Book). The Amendments will become effective on June 1, 2007.

### Purpose

#### *Exchange Take-Over Bids and Substantial Issuer Bids*

Over time, Toronto Stock Exchange (Exchange) has had a significant decline in the number of applications received for exchange take-over and substantial issuer bids. Over the past four years, the Exchange has not received any applications for exchange take-over or substantial issuer bids. As a result of the declining use of such bids, TSX has removed from the Toronto Stock Exchange Company Manual (Manual) the provisions for bids, other than provisions related to normal course issuer bids (NCIBs) and debt substantial issuer bids (DSIBs). The Amendments remove exchange take-over bid and (equity) substantial issuer bid provisions from the Rule Book to be consistent with the Manual deletions.

#### *Normal Course Issuer Bids and Debt Substantial Issuer Bids*

Revisions to the Manual that amend NCIB and DSIB provisions have been proposed and published for comment on numerous occasions. The most recent notice of approval for these Manual amendments was published on April 27, 2007. The Amendments import into the Rule Book portions of the revised NCIB and DSIB Manual rules that are of particular relevance to Participating Organizations.

The fundamental objectives of the NCIB and DSIB policies are to provide issuers with the ability to buy back their own securities in a cost effective way that treats public security holders fairly while not adversely impacting the market. In an attempt to balance these objectives, TSX has considered, among other things, the variances in liquidity, public float, distribution and market capitalization of TSX listed issuers.

The Amendments do not include rules relating to the use of derivatives and accelerated buy backs in connection with NCIBs. TSX has decided to postpone the implementation of these rules.

## Non-Public Interest Rule

The Amendments are not considered to be a “public interest” rule. The Amendments are consistent with changes that have already been made, and are being made, to the Manual effective June 1, 2007. The public has been given the opportunity to comment on the Manual amendments that are the same in substance to the Amendments.

## Amendments

The Amendments are provided in Appendix A. A table of concordance between the Rule Book and the Manual is provided in Appendix B.

### *Division 1 – Definitions and Interpretation*

This division has been revised to conform to amendments made throughout Part 6 of the Rule Book.

### *Division 2 – General Rules Applicable to Bids*

This division has been repealed. Rules about DSIBs are now located in division 4. Rules about NCIBs are now located in division 5.

### *Division 3 – Special Rules Applicable to Stock Exchange Take-Over Bids*

This division has been repealed.

### *Division 4 – Debt Substantial Issuer Bids*

This division has been revised to focus solely on DSIBs instead of substantial issuer bids generally. Cross-reference is made to sections 628 and 629.2 of the Manual.

### *Division 5 – Normal Course Issuer Bids*

This division clarifies the broker’s role and obligations in an NCIB. Cross-reference is made to sections 628, 629 and 629.1 of the Manual.

### *Division 6 – Powers of the Exchange*

This division has been revised to conform to amendments made throughout Part 6 of the Rule Book.

## Timing and Transition

Because the Amendments are not considered to be a public interest rule, in accordance with the Protocol, the Amendments were deemed to be approved by the OSC at the time TSX filed its Amendments submission on May 25, 2007. The Amendments will become effective on June 1, 2007 (the Effective Date).

As of the Effective Date:

1. all Notices of Intention to make a NCIB or DSIB **filed on or after the Effective Date** must be made in accordance to the Manual amendments;
2. Issuer Bids whose commencement date was prior to the Effective Date, or which TSX has accepted notice thereof in writing prior to the Effective Date

but have not yet commenced, may comply with the former rules until the expiry of the bid; and

3. Issuer Bids that are eligible to be grandfathered under the former rules may choose to comply with the Manual amendments and the Amendments, provided that a revised Notice of Intention is accepted by TSX and a news release reflecting the revisions is released at the time of acceptance.

For further transition information, see section 629.3 in the Manual.

## APPENDIX A

### *Rules of the Toronto Stock Exchange*

#### **Amendments to Part 6 – Exchange Take-Over Bids and Exchange Issuer Bids**

The Rules of the Toronto Stock Exchange are amended as follows:

1. Rule 6-101 is amended by:

(a) deleting the definitions “average bid value”, “bid”, “closing price”, “competing stock exchange take-over bid”, “insider bid”, “last bid”, “market price”, “normal course purchase”, “notice”, “ranking bid”, “shares sought”, “shares not sought”, “stock exchange take-over bid”, “substantial issuer bid”, and “take-over bid”.

(b) adding the following definition of “average daily trading volume”:

**“average daily trading volume”** or **“ADTV”** means the trading volume on the Exchange for the most recently completed six calendar months preceding the date of acceptance of the notice of normal course issuer bid by the Exchange, excluding any purchases made by the listed issuer through the facilities of the Exchange under its normal course issuer bid during such six months, divided by the number of trading days for the relevant six months. In the case of listed securities which have been listed on the Exchange for a period of less than six months, the ADTV for such securities shall be based on the period since the date of listing, but must be at least four weeks preceding the date of acceptance of the notice of normal course issuer bid by the Exchange.

(c) adding the following definition of “block”:

**“block”** means a quantity of securities that either:

- (a) has a purchase price of \$200,000 or more; or
- (b) is at least 5,000 securities and has a purchase price of at least \$50,000; or
- (c) is at least 20 board lots of the security and total 150% or more of the ADTV for that security,

and are not owned, directly or indirectly, by an insider of the listed issuer.

(d) adding the following definition of “broker”:

**“broker”** means the Participating Organization designated by the listed issuer to make all purchases of listed securities for the purposes of the normal course issuer bid.

(e) revising the following definition of “circular bid”:

**“circular bid”** means a formal take-over bid or ~~an~~ formal issuer bid made in compliance with the requirements of Part XX of the *Securities Act* ~~or, if applicable, Part XVII of the *Canada Business Corporations Act*.~~

(f) adding the following definition of “debt substantial issuer bid”:

**“debt substantial issuer bid”** means an issuer bid, other than a normal course issuer bid, for debt securities that are not convertible into securities other than debt securities.

- (g) adding the following definition of “insider”:

**“insider”** has the same definition found in section 601 of the Company Manual.

- (h) adding the following definition of “investment fund”:

**“investment fund”** has the same definition found in National Instrument 51-102 *Continuous Disclosure Obligations*.

- (i) revising the definition of “issuer bid” by:

- (i) inserting “made through the facilities of the Exchange,” after “means an offer”;
- (ii) replacing “company” with “issuer”; and
- (iii) inserting “the” before “instrument”.

- (j) revising the following definition of “normal course issuer bid”:

**“normal course issuer bid”** means an issuer bid by a listed issuer to acquire its listed securities where the purchases ~~(other than purchases by way of a substantial issuer bid)~~:

- (a) if the issuer is not an investment fund, do not, when aggregated with all other purchases by the listed issuer during the same trading day, aggregate more than the greater of: (i) 25% of the average daily trading volume of the listed securities of that class; and (ii) 1,000 securities;
- (b) ~~(a) do not, when aggregated with the total of~~ if the issuer is an investment fund, do not, when aggregated with all other purchases ~~in~~ by the listed issuer during the preceding 30 days, ~~whether through the facilities of a stock exchange or otherwise,~~ aggregate more than 2% of the listed securities of that class outstanding on the date of acceptance of the notice of normal course issuer bid by the Exchange; and
- (c) ~~(b)~~ over a 12-month period, commencing on the date specified in the notice of the normal course issuer bid, do not exceed the greater of:
  - (i) 10% of the public float, on the date of acceptance of the notice of normal course issuer bid by the Exchange; or
  - (ii) 5% of such class of securities issued and outstanding on the date of acceptance of the notice of normal course issuer bid by the Exchange, excluding any securities held by or on behalf of the listed issuer on the date of

acceptance of the notice of normal course issuer bid by the Exchange, ~~whether such purchases are made through the facilities of a stock exchange or otherwise.~~

and for the purposes of (b) and (c), whether such purchases are made through the facilities of a stock exchange or otherwise, but excluding purchases made under a circular bid.

(k) replacing in the definition of “principal shareholder” the word “shareholder” with “securityholder”, the word “company” with “listed issuer”, and the word “shares” with “securities”.

(l) revising the following definition of “public float”:

~~“public float”~~ means the number of ~~shares~~securities of the class which are issued and outstanding, less the number of ~~shares of the class securities that are pooled, escrowed or non-transferable, and less the number of securities of the class, known to the issuer after reasonable inquiry,~~ beneficially owned, or over which control or direction is exercised by:

(a) the listed issuer;

(b) ~~(a)~~ every senior officer or director of the listed ~~company;~~issuer; and

(c) ~~(b)~~ every principal ~~shareholder~~securityholder of the listed ~~company; and~~issuer.

~~(c) — the number of shares that are pooled, escrowed or non-transferable.~~

2. Rule 6-102 is amended as follows:

### 6-102 Interpretation

(1) For the purposes of this Part, a purchase shall be deemed to have taken place when the offer to buy or the offer to sell, as the case may be, is accepted.

~~(2) — For the purposes of this Part,~~

(2) ~~(a)~~ For the purposes of this Part, in determining the beneficial ownership of securities of ~~an offeror~~a security holder or of any person or company acting jointly or in concert with the ~~offeror shall be determined in accordance with section 90 of the Securities Act; and~~

~~(b) — where any~~security holder, at any given date, the security holder, person or company ~~is deemed by Rule 6-102(2)(a) to~~shall be deemed to have acquired and be the beneficial owner of ~~unissued securities, the number of outstanding securities of a class in respect of an offer to acquire shall be determined in accordance with subsection 90(3) of the Securities Act~~a security if the security holder, person or company is the beneficial owner of any issued security on that date.

- (3) For the purposes of this Part, ~~whether in calculating the number of securities acquired by the listed issuer, securities purchased by~~ a person or company ~~is~~ acting jointly or in concert with ~~an offeror shall be~~ the listed issuer, as determined in accordance with section 91 of the Securities Act, during the period of an outstanding normal course issuer bid will be included.
- (4) For the purposes of this Part, the number of securities that may be acquired by a listed issuer shall be adjusted to account for stock splits, consolidations and stock dividends, or other similar events.
- (5) For the purposes of section 93(3)(e) of the Securities Act, an issuer bid may only be completed as a normal course issuer bid in accordance with sections 629 and 629.1 of the Company Manual. A debt substantial issuer bid may only be completed in accordance with section 629.2 of the Company Manual
3. Rules 6-201 to 6-207 inclusive and Policy 6-201 are repealed.
4. Rules 6-301 to 6-305 inclusive are repealed.
5. Division 4 is renamed “Debt Substantial Issuer Bids”.
6. Rule 6-401 is amended by:
- renaming it “Debt Substantial Issuer Bids”; and
  - deleting the text of the rule and replacing it with “A debt substantial issuer bid shall be made in accordance with the prescribed terms and procedures set out in sections 628 and 629.2 of the Company Manual.”
7. Rule 6-402 is amended by renaming it “Special Procedures for Debt Substantial Issuer Bids”.
8. Rule 6-402(1) is amended by:
- inserting “debt” before “substantial”;
  - deleting “for securities that are neither voting nor equity securities” before “provided”; and
  - replacing “shareholders” with “securityholders”.
9. Rule 6-402 subsections (2) to (7) inclusive are deleted and replaced by the following:
2. ~~(6)~~—A book for receipt of tenders to the debt substantial issuer bid shall be opened on the Exchange not sooner than the ~~twenty-first~~thirty-fifth calendar day after the date on which notice of the bid is accepted by the Exchange and at such time, and for such length of time, as may be determined by the Exchange.

3. Where in a debt substantial issuer bid, more securities are tendered than the number of securities sought, the listed issuer shall take up a proportion of all securities tendered equal to the number of securities sought divided by the number of securities tendered, and Participating Organizations shall make allocations in respect of securities tendered in accordance with the instructions of the Exchange.
4. In respect of a debt substantial issuer bid:
- (a) no Participating Organization shall knowingly assist or participate in the tendering of more securities than are owned by the tendering party; and
- (b) tendering, trading and settlement by Participating Organizations shall be in accordance with such rules as the Exchange shall specify to govern each bid.
5. A Participating Organization acting jointly or in concert with the listed issuer shall not enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the listed issuer subject to the bid that has the effect of providing to the holder or owner, a consideration of greater value than that offered to the other holders of the same class of securities.
10. Rule 6-501 is amended by adding these words after “procedures”: “set out in sections 628, 629 and 629.1 of the Company Manual and the provisions of this Rule and Policy.”
11. Policy 6-501(1) is amended by renaming it “Requirements” and by deleting the text in subsection (1) to (14) inclusive and replacing it with the following:

~~The Exchange has set the following rules~~A full list of requirements for listed issuers and is set out in sections 629 and 629.1 of the Company Manual. Participating Organizations, when acting as a broker making purchases on their own behalf of a listed issuer pursuant to a normal course issuer bid, must comply with the following requirements that are imposed on listed issuers in sections 629 and 629.1 of the Company Manual:

1. **Price Limitations** - It is inappropriate for ~~an~~a listed issuer making a normal course issuer bid to abnormally influence the market price of its ~~shares~~securities. Therefore, purchases made by listed issuers pursuant to a normal course issuer bid ~~other than purchases made in the eVWAP Facility or the POSIT Call Market or in the Closing Call~~ shall be made at a price which is not higher than the last independent trade of a board lot of the class of ~~shares~~securities which is the subject of the normal course issuer bid. In particular, the following are not ~~“independent trades”~~:
  - (a) trades directly or indirectly for the account of (or an account under the direction of) an insider ~~of the issuer, or any associate or affiliate of either the issuer or an insider of the issuer;~~
  - (b) trades for the account of (or an account under the direction of) the ~~Approved Trader making purchases for the bid; and~~broker making purchases for the bid;

- (c) trades solicited by the ~~Approved Trader making purchases for the bid~~ broker making purchases for the bid; and

**Amended (March 29, 2004)**

(d) trades directly or indirectly by the broker making purchases for the bid which are made in order to facilitate a subsequent block purchase by the issuer at a certain price.

2. **Prearranged Trades** - It is important to investor confidence that all holders of identical ~~shares~~ securities be treated in a fair and even-handed manner by the listed issuer. Therefore, ~~an intentional~~ cross or pre-arranged trade under a normal course issuer bid is not permitted ~~where the seller is an insider of the issuer, an associate of an insider, or an associate or affiliate of the issuer, unless such trade is made in connection with the block purchase exception.~~
3. **Private Agreements** - It is ~~the view of the Exchange that it is~~ in the interest of ~~shareholders~~ security holders that transactions pursuant to an issuer bid should be made in the open market. This philosophy is also reflected in the *Securities Act*, which provides very limited exemptions for private agreement purchases. ~~The Exchange, therefore, will not normally accept a notice which indicates that~~ Therefore, purchases will must be made ~~other than~~ by means of open market transactions.
4. **Sales from Control** - Purchases pursuant to a normal course issuer bid shall not be made from a person or company effecting a sale from control block pursuant to ~~subsection 72(7) of the Part 2 of Multilateral Instrument 45-102 Resale of Securities Act and Policy 4-305 on Sales from Control Blocks Through the Facilities of the Exchange and sections 630-633 of the Company Manual.~~ It is the responsibility of the ~~Participating Organization~~ broker acting as agent for the listed issuer to ensure that it is not bidding in the market for the normal course issuer bid at the same time as a ~~Participating Organization~~ broker is offering the same class of securities of the listed issuer under a sale from control.
5. **Purchases During a ~~Take-Over~~ Circular Bid** - ~~An~~ A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid during a ~~take-over~~ circular bid for those securities. This restriction applies during the period from the first public announcement of the bid until the termination of the period during which securities may be deposited under such bid, including any extension thereof. This restriction does not apply to purchases made solely as a trustee pursuant to a pre-existing obligation under a pension, stock purchase, stock option, dividend reinvestment or other plan. In addition, if the listed issuer is making a securities exchange take-over bid, it shall not make any purchases of the security offered in the bid ~~pursuant to OSC Policy 9.3, other than those permitted by OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions.~~

**(10) Participating Organization**

6. **Undisclosed Material Information** - A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid while the listed issuer possesses any material information which has not been disseminated. Reference is made to the Exchange's Timely Disclosure Policy (in Part 4 of the Company Manual) in this regard. This restriction does

not apply to normal course issuer bids carried out pursuant to automatic securities purchase plans established by the listed issuer in accordance with applicable securities laws, particularly Section 175 if Regulation 1015 of the Securities Act. All such plans must be precleared by the Exchange prior to implementation. See OSC Staff Notice 55-701- Automatic Securities Dispositions Plans and Automatic Securities Purchase Plans, or any successor notice, policy or instruments, for additional guidance.

7. **Block Purchase Exception** – A listed issuer may make one block purchase per calendar week which exceeds the daily repurchase restriction contained in subsection 628(a)(ix)(a) of the Company Manual, subject to maximum annual aggregate limits. Once the block purchase exception has been relied on, the listed issuer may not make any further purchases under the normal course issuer bid for the remainder of that calendar day.
8. **Purchases at the Opening and Closing** – A listed issuer shall not make any purchases of its securities pursuant to a normal course issuer bid at the opening of a trading session, or during the 30 minutes before the scheduled close of a trading session. However, notwithstanding Policy 6-501(1)(1), purchases of securities pursuant to a normal course issuer bid may be effected through the Exchange's Market-On-Close facility.
9. **Time Period** – A normal course issuer bid shall not extend for a period of more than one year from the date on which purchases may begin.

(2) Broker

~~The~~A listed issuer shall appoint only one ~~Participating Organization~~broker at any one time as its broker to make purchases. The listed issuer shall inform the Exchange in writing of the name of the responsible broker.~~The Participating Organization and registered representative. The broker~~ shall be provided with a copy of the notice and be instructed to make purchases in accordance with the provisions ~~of this Policy herein, the provisions of sections 628, 629 and 629.1 of the Company Manual,~~ and the terms of such notice.~~The Exchange will look to its Participating Organizations to make purchases in accordance with such instructions.~~ To assist the Exchange in its surveillance function, the listed issuer is required to receive ~~the~~prior written consent of the Exchange where it intends to change its broker.

~~(11) — Powers of the Exchange~~

~~The powers of the Exchange with respect to normal course issuer bids are set out in Rule 6-601. They include the power to exempt any person from Exchange Requirements where in the opinion of the Exchange, it would not be prejudicial to the public interest to do so. Blanket exemptions will only be granted after prior discussions with and the concurrence of the Commission.~~

~~(3)(12) Suspension for Non-Compliance~~

Failure of a broker making purchases pursuant to a normal course issuer bid to comply with any requirement herein or in sections 629 and 629.1 of the Company Manual may result in the suspension of the bid.

12. Rule 6-601(a) is amended by:
  - (a) replacing “company” with “listed issuer”;
  - (b) replacing “stock exchange take-over bid” with “debt”; and
  - (c) deleting “,normal course purchase”.
13. Rule 6-601(b) is amended by replacing “company” with “listed issuer”.
14. Rule 6-601(c) is revised as follows:
  - (c) delay the date upon which the book in respect of a ~~stock exchange take-over bid or debt~~ substantial issuer bid is to be opened to such date as it may, in its discretion, determine on the occurrence of any of the following:
    - (i) the announcement or making of a ~~competing stock exchange bid or~~ circular bid for securities of the same ~~offer~~listed issuer,
    - (ii) the ~~acceptance of a notice of change or a notice of amendment of the terms of the stock exchange take-over bid or of a competing bid, or the~~ announcement of a change in the terms of a circular bid for securities of the same ~~offer~~listed issuer, or
    - (iii) any other event that, in the opinion of the Exchange, justifies such a delay;
15. Rule 6-601(d) is amended by:
  - (a) replacing “an offeror” with “a listed issuer”;
  - (b) replacing “stock exchange take over bid or” with “debt”; and
  - (c) replacing “referred to in Rule 6-207;” with “of a material change; and”.
16. Rule 6-601(e) is deleted and replaced with former rule 6-601(g).
17. Rule 6-601(f) is deleted.

**APPENDIX B**

**TABLE OF CONCORDANCE**

<u>Topic</u>	<u>TSX Trading Rule Section</u>	<u>TSX Company Manual Section</u>
Definitions	Rule 6-101	628(a)
Interpretation	Rule 6-102	628(b) and (c)
Debt Substantial Issuer Bids	Rule 6-401	629.2
Special Procedures for Debt Substantial Issuer Bids	Rule 6-402(1)	629.2(a)
	Rule 6-402(2)	629.2(d)
	Rule 6-402(3)	629.2(e)
	Rule 6-402(4)	629.2(f)
	Rule 6-402(5)	629.2(g)
Normal Course Issuer Bids	Rule 6-501	629(a)
	Policy 6-501(1)(1)	629(l)(1)
	Policy 6-501(1)(2)	629(l)(2)
	Policy 6-501(1)(3)	629(l)(3)
	Policy 6-501(1)(4)	629(l)(4)
	Policy 6-501(1)(5)	629(l)(5)
	Policy 6-501(1)(6)	629(l)(6)
	Policy 6-501(1)(7)	629(l)(7)
	Policy 6-501(1)(8)	629(l)(8)
	Policy 6-501(1)(9)	629(e)
	Policy 6-501(2)	629(m)
	Policy 6-501(3)	629(n)