

**CANADIAN SECURITIES ADMINISTRATORS'
STAFF NOTICE 61-301**

Staff Guidance on the Practice of "Mini-Tenders"

On September 28, 1999, the Canadian Securities Administrators (the "CSA") released an Investor Alert entitled "Mini-Tender Offers - Watch Out for Mini-Tender Offers Below Market Price". This Investor Alert announced that the staff of each of the CSA ("Staff") was examining the phenomenon of mini-tenders to assess the appropriate regulatory response to this practice. Staff has discussed this issue with various market participants, including the Investment Dealers Association, The Toronto Stock Exchange, The Canadian Depository for Securities Limited, custodians of securities, issuers who have been targeted by mini-tenders and a Canadian firm currently engaged in the practice of making mini-tenders. The following sets out Staff's current views on mini-tenders.

What is a Mini-Tender?

A mini-tender is a widely-disseminated offer to purchase shares of a public company at a price below the current market price. A mini-tender is different from a take-over bid in Canada because a mini-tender offeror usually offers to acquire only a small percentage of the outstanding shares of a public company and in any event significantly less than 20% of the outstanding shares of a public company.

Numerous mini-tenders have taken place in the United States and Staff is aware of at least fourteen mini-tenders that have been made for Canadian companies.

Generally, mini-tenders offer consideration that is anywhere from 3-35% below the current market price of the shares sought. This discount invites the question of why securityholders would tender their securities to a mini-tender when they could sell them in the market for a greater price.

Based upon the inquiries of Staff, the only circumstance in which investors might benefit from tendering their securities to a mini-tender is in the circumstances where an individual investor holds less than a "board lot" of securities (a "board lot" means 100 shares having a market value of \$1.00 per share or greater; 500 shares having a market value of less than a \$1.00 and not less than \$0.10 per share; or 1,000 shares having a market value of less than \$0.10 per share). Generally, no commissions are payable in connection with the tender of securities to a mini-tender. Therefore, proponents of mini-tenders point out that in some circumstances the holder of less than a board lot of securities could tender to a mini-tender to avoid minimum brokerage commissions that make the sale of his or her securities relatively costly.

Whether or not tendering to a mini-tender might be attractive in these very limited circumstances, Staff would like to stress that investors should carefully examine a mini-tender to determine whether it is in their interests to tender to it. Investors are urged to consult their financial advisers in this regard.

Communication of Mini-Tenders Not Required

Currently, mini-tender offerors use the information systems put in place by market intermediaries to communicate their mini-tenders to the securityholders of target issuers. In this regard, Staff wishes to express its view that there is currently no specific requirement under Canadian securities legislation or policies that notice of a mini-tender must be delivered to registered holders of the securities subject to the mini-tender. A mini-tender is not a "take-over bid" as defined in Canadian securities legislation. Therefore, intermediaries are not obliged under Part IX of National Policy 41 to advise their clients who are non-registered holders of securities, of the commencement of a mini-tender.

Furthermore, Staff wishes to express its view that registrants are not obliged under securities laws to pass on mini-tenders to their clients. If registrants choose or are otherwise obliged to pass on information concerning a mini-tender to their clients, they should ensure that all relevant information concerning the mini-tender and the market for the affected security is given to their clients, including the warning referred to in item 2 below.

Staff Concerns

Staff has serious concerns that an investor might tender to a mini-tender based upon a misunderstanding of the mini-tender or the current market price of the security subject to the mini-tender. Mini-Tenders bear a close resemblance to formal take-over bids, which are historically equated with an offering price that includes a premium to the current price. In Staff's opinion, causing investors to tender to a mini-tender based upon such a misunderstanding can be abusive of the capital markets and contrary to applicable anti-fraud provisions of certain securities legislation.

As a result, Staff suggests that a minimum level of disclosure be provided by the mini-tender offeror to holders of the securities subject to a mini-tender. By including this minimum disclosure with the information contained in a mini-tender, the risk that a securityholder would be tendering to a mini-tender through inadvertence or misunderstanding should be reduced or eliminated.

Suggested Disclosure in Mini-Tenders

Staff's view is that in order to avoid confusion and misunderstanding, a mini-tender offeror should ensure that the information that accompanies any widely-disseminated offer to purchase securities at a price below that security's current market price should prominently include the following information:

1. the principal market or markets for the securities of the issuer of the target securities sought to be acquired pursuant to the offer, the date of the offer and the market price of the securities immediately before the earlier of the public announcement of the offer or the date of the offer, as the case may be;
2. a warning that the offering price is below the current market price of those securities;
3. a statement that any person considering tendering to the offer should consult his or her financial adviser;
4. a description of the withdrawal rights of the securityholders under the offer and details of the withdrawal procedure; if no such withdrawal rights exist, a clear statement should be included to that effect;

5. if applicable, a statement that the offeror could revoke its offer at any time; and
6. a clear calculation of the final price to be paid for the target securities.

Staff also suggests that mini-tender offerors provide a copy of their mini-tenders directly to the issuer of the securities subject to the mini-tender.

Depositories, participants and intermediaries who summarize and forward notice of mini-tenders (notwithstanding that there is currently no specific requirement to do so under Canadian securities legislation or policies, as discussed above) should ensure that their summaries prominently include the warning referred to in item 2 above. The summary should also state that any person considering tendering to the offer should first consult his or her financial adviser.

Staff will continue to monitor mini-tenders and in the event that a mini-tender is conducted in a manner or in circumstances which are prejudicial to the public interest, Staff will recommend to CSA members that appropriate action be taken which could include seeking a cease-trade order in respect of the mini-tender or the person or company making the mini-tender.

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