

Canadian Securities Administrators Staff Notice 62-304**Conditions in Financing Arrangements for Take-over Bids and Issuer Bids**

This notice sets out the position of the CSA staff regarding the acceptability of conditions in financing arrangements for take-over bids and issuer bids.

All of the provinces that regulate the securities law aspects of take-over and issuer bids have requirements relating to bid financing. Specifically, if an offeror makes a cash bid, it must make adequate arrangements before the bid to ensure that it has the required funds available to pay for all the securities it has offered to purchase.

It is the normal practice in Canada for bid financing arrangements to have some conditions. CSA staff have previously taken the position that some conditionality is acceptable, provided that the conditions are customary and minimal. However, earlier this year an Ontario court issued a judgment that has raised some uncertainty regarding the legal status of financing conditions.

The judgment of the Ontario Superior Court of Justice in *BNY Capital Corp. v. Katotakis*, reported at [2005] O.J. No. 813, included the following statement:

"Adequate arrangements" has been interpreted to mean that there must be accurate, clear and unequivocal assurance that the financing is in place in the sense that a public shareholder contemplating tendering his or her shares to the bid can be unequivocally assured that the funds are available to complete the purchase.

CSA staff consider that an offeror has complied with the bid financing requirement if the offeror reasonably believes the possibility is remote that it will not be able to pay for tendered securities because of a financing condition not being satisfied. In these circumstances, there is sufficient assurance that the funds are available to complete the purchase even though there is some conditionality in the financing arrangements. Staff will continue to interpret the financing requirement in this manner.

The Ontario Securities Commission proposes to introduce a rule that would confirm that financing arrangements may have a limited degree of conditionality. The proposed rule, which was published at (2005), 28 OSCB 5689, is consistent with staff's interpretation of the financing requirement as set out above.

September 2, 2005

Questions

Please refer your questions to any of:

British Columbia Securities Commission:

Rosann Youck, Senior Legal Counsel: (604) 899- 6656
Callers in B.C. and Alberta may also dial 1 800 373-6393

Alberta Securities Commission:

Marsha Manolescu, Deputy Director, Legislation (403) 297-2091
Chris Prokop, Legal Counsel (403) 297-2093

Saskatchewan Financial Services Commission:

Dean Murrison, Deputy Director, Legal: (306) 787-5879

The Manitoba Securities Commission:

Chris Besko, Legal Counsel - Deputy Director, Legal and Enforcement: (204) 945-2561

Ontario Securities Commission:

Ralph Shay, Director, Take-over/Issuer Bids, Mergers & Acquisitions: (416) 593-2345
Naizam Kanji, Senior Legal Counsel, Take-over/Issuer Bids, Mergers & Acquisitions: (416) 593-8060

Autorité des marchés financiers:

Benoit Dionne, Manager, Corporate Finance: (514) 395-0558 ext. 4411
Kristina Beauclair, Securities Analyst: (514) 395-0558 ext. 4444