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## SECURITIES INDUSTRY (TAKE-OVER) RULES, 2019

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## MINISTRY OF FINANCE

S.I. No. 31 of 2019

### SECURITIES INDUSTRY (NO. 10 OF 2011)

#### SECURITIES INDUSTRY (TAKE-OVER) RULES, 2019

The Securities Commission of The Bahamas, in exercise of the powers conferred by section 150 of the Securities Industry Act (No. 10 of 2011), makes the following rules —

#### 1. Citation.

These Rules may be cited as the Securities Industry (Take-over) Rules, 2019.

#### 2. Interpretation.

(1) In these Rules —

“**the Act**” means the Securities Industry Act (*No. 10 of 2011*);

“**affiliate**” has the meaning given in the Securities Industry Act, and also includes where two body corporates are subsidiaries of the same body corporate;

“**beneficial owner**” has the meaning given in the Securities Industry Act;

“**class of securities**” includes a series of a class of securities;

“**commencement date**” refers to the date on which a take-over bid is first announced;

“**dissenting shareholder**” means a shareholder who has not assented to the offer and a shareholder who has failed or refused to transfer his securities to the offeror in accordance with the terms of the offer;

“**effective control**” means the holding of securities by any person, either individually or together with a person acting in concert, which will result in that person, either individually or together with a person acting in concert, having the right to exercise, or control the exercise, of thirty per cent or more of the rights attached to the voting securities of the company;

- “equity security”** means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;
- “false market”** means a market where security prices are artificially inflated or deflated or there is other behaviour which influences the market for personal gain;
- “formal bid”** means —
- (a) a take-over bid or an issuer bid to which rule 16 applies; or
  - (b) a take-over bid that is exempted from rules 11 and 16, 17, 57, 58 and 59 or an issuer bid that is exempted from rules 11, 16, 17, 57, and 59 by reason of an exemption under rule 65(1)(b) or 66(f), if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;
- “formal valuation”** means a valuation of participating securities that is prepared by a qualified and independent valuer;
- “form”** means the forms contained in the *First Schedule*;
- “independent valuer”** means a valuator that is recognized as a professional engaged in the provision of the specific form of valuation required at the time, by this rule, who does not have a conflict of interest and is independent of all interested parties in the subject take-over;
- “inside bid”** refers to a take-over bid where presently, or within the preceding twelve months, a director, officer, employee, affiliate, or any other person that has beneficial ownership of or control over, whether directly or indirectly, securities of the issuer carrying ten per cent or more of voting rights or an issuer or any person who has access to a material confidential fact about a target issuer seeks to acquire the target issuers securities, or by an insider of the offeree issuer whose securities are the subject of the bid, by any associate or affiliate of an insider of that offeree issuer;
- “interested person”** means, for the purposes of rules 63 and 64 —
- (a) an offeree issuer;
  - (b) security holder, director or officer of an offeree issuer;
  - (c) an offeror;
  - (d) the Commission; and
  - (e) any person not referred to in subparagraphs (a) to (d) who in the opinion of the Commission or the Court, as the case may be, is a proper person to make an application under rule 64 as the case may be;
- “issuer bid”** has the meaning given in the Securities Industry Act;

**“offer”** includes, wherever appropriate, take-overs and merger transactions however effected;

**“offer to acquire”** means —

- (a) a written offer to purchase, or a solicitation of an offer to sell securities; or
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited, or any combination thereof, and the person accepting an offer to sell shall be deemed to be making an offer to acquire from the person that made the offer to sell;

**“offer period”** means the period from the time the offer document has been communicated to the shareholders of the offeree, until the lapse of the offer or closing date;

**“offeree issuer” or “offeree”** means an issuer —

- (a) whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire; and
- (b) who has at least 1 security holder resident in The Bahamas, whether or not the take-over bid, issuer bid or offer to acquire is made to a security holder resident in The Bahamas;

**“offeror”** includes —

- (i) a person who makes a take-over bid, an issuer bid or an offer to acquire and, includes a person who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire;
- (ii) a person acting jointly or in concert with an offeror;

**“offeror’s securities”** means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person acting jointly or in concert with the offeror;

**“participating security”** means an equity security and includes a security that is convertible into an equity security;

**“person”** has the meaning assigned to it under the Securities Industry Act;

**“prior valuation”** means —

- (a) an existing independent appraisal or valuation; or
- (b) any material non-independent appraisal or valuation prepared with the participation of, or for, or on behalf of, the directors of an issuer, in respect of an issuer, its material assets or its securities;

**“published market”** means, as to any class of securities, any market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a newspaper



or business or financial publication of general and regular paid circulation;

“**securities**” has the meaning assigned to it under the Securities Industry Act;

“**the Commission**” means The Securities Commission of The Bahamas continued under section 10 of the Act.

- (2) For the purposes of these Rules —
- (a) where the method of communication is not expressly provided, the method of communication shall be in writing;
  - (b) a take-over bid or an issuer bid expires at the later of —
    - (i) the end of the period, including any extension, during which securities may be deposited pursuant to the bid; and
    - (ii) the time at which the offeror becomes obligated by the terms of the bid to take up or reject securities deposited under the bid;
  - (c) the offeror is deemed to have acquired and be the beneficial owner of a security, including an unissued security, if the offeror or the person —
    - (i) is the beneficial owner of any security convertible within sixty days following acquisition; or
    - (ii) has the right or obligation, whether or not on conditions, to acquire within sixty days following such date, beneficial ownership of the security, whether through the exercise of an option, warrant, right or subscription privilege or otherwise;
  - (d) if two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to any such offer or offers to acquire are deemed to be securities subject to the offer to acquire of each such offeror for the purpose of determining whether any such offeror is making a Take-over bid;
  - (e) if an offeror or any person acting jointly or in concert with the offeror is deemed to be the beneficial owner of unissued securities, the securities are deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of that offeror’s offer to acquire;
  - (f) the following are presumed to be acting jointly or in concert with an offeror —
    - (i) every person who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire;

- (ii) every person who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person intends to exercise any voting rights attaching to any securities of the offeree issuer; and
  - (iii) every associate or affiliate of the offeror;
- (g) a registered market actor, acting solely in an agency capacity for the offeror in connection with a take-over bid or an issuer is not to be presumed to be acting jointly or in concert with the offeror in connection with the bid;
- (h) a reference to an offer to acquire, or to the acquisition or ownership of securities or to the control or direction over securities is to be construed to include a direct or indirect offer to acquire, direct or indirect acquisition or ownership of, or the direct or indirect control or direction over securities;
- (i) the market price of securities for which there is a published market, shall be determined as follows —
  - (i) at any date, is an amount equal to the simple average of the closing price of securities of that class for each of the business days on which there was a closing price during the twenty business days immediately preceding that date; or
  - (ii) if a published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the market price of the securities, at any date, is an amount equal to the average of the simple averages of the highest and lowest prices during the twenty business days immediately preceding that date;
- (j) if there is more than one published market for a security, the market price for the purposes of subparagraph (i) shall be determined as follows —
  - (i) if only one of the published markets is in The Bahamas, the market price shall be determined solely by reference to that market;
  - (ii) if there is more than one published market in The Bahamas, the market price shall be determined solely by reference to the published market in The Bahamas on which the greatest volume of trading in the particular class of securities occurred, during the twenty-eight days immediately preceding the date as of which the market price is being determined; and
  - (iii) if there is no published market in The Bahamas, the market price shall be determined solely by reference to the published

market on which the greatest volume of trading in the particular class of securities occurred, during the twenty-eight days immediately preceding the date as of which the market price is being determined;

- (k) if there has been trading of securities in a published market for fewer than fourteen of the twenty-eight days immediately preceding the date as of which the market price of the securities is being determined, the market price is the average of the following prices established for each day of the twenty-eight days immediately preceding that date —
  - (i) the average of the bid and offer prices for each day on which there was no trading;
  - (ii) the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price; and
  - (iii) the average of the highest and lowest prices of securities of that class for each day that there has been trading, if the published market provides only the highest and lowest prices of securities traded on a particular day.

### **3. Application.**

These Rules shall apply in any take-over involving a public issuer that —

- (a) is listed on a domestic exchange;
- (b) is operating on the over the counter market; and
- (c) has made a public offer.

### **4. Commission's right to bring action for securities fraud.**

Nothing in these Rules on take-overs shall override any provision of securities laws within the Commonwealth of The Bahamas relating to the right of the Commission to bring an action for securities fraud.

## **PART II - GENERAL PRINCIPLES**

### **5. Exercising rights of control.**

Rights of control shall be exercised in good faith and with due regard to the exercise of minority rights.

### **6. Treatment of shareholders.**

- (1) An offeror shall provide equal and fair treatment to all shareholders of the same class of an offeree, whether in relation to the consideration to be

paid for their securities, the information to be supplied to them pursuant to these Rules, or otherwise.

- (2) Information about companies involved in an offer shall be made available to all shareholders at the same time and in the same manner.
- (3) Shareholders shall be given full, complete and timely information to enable them to make an informed decision concerning the merits of an offer.
- (4) The obligations of an offeror towards the shareholders of the offeree shall, for the purposes of these Rules, be no less than its obligation towards the offeror's shareholders.

**7. Holders of same class securities to be offered identical consideration.**

- (1) Subject to these Rules, if a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.
- (2) Where an offeror makes or intends to make a take-over bid or issuer bid, the offeror shall not enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer 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.
- (3) Where before the expiry of a bid, a variation in the terms of the take-over bid or issuer bid increases the value of the consideration offered for the securities, the offeror shall pay that increased consideration to each person whose securities are taken up pursuant to the bid, whether or not the securities were taken up by the offeror before the variation.

**8. Duty of offeree director advising shareholders.**

Directors of an offeree shall at all times when advising or informing the shareholders about a take-over —

- (a) act only in their capacity as directors without regard to any personal or family interest;
- (b) have regard only to the interests of the shareholders, employees and creditors; and
- (c) act in good faith.

**9. Directors statement of responsibility.**

All documents issued in connection with a take-over by the offeror or offeree shall contain a statement signed by all the respective directors that they jointly

and severally accept full responsibility for the accuracy of the information contained in the documents.

**10. Accuracy of statement to vary offer bid.**

Any document or statement of an intention to vary an offer bid during an offer period, issued or made by any person must —

- (a) meet a high standard of accuracy; and
- (b) be adequately and fairly presented.

**11. Prevention of false market.**

All persons involved in a offer shall take the necessary measures to prevent a false market in securities.

### **PART III - REQUIREMENTS FOR BIDS AND CONDUCT OF OFFER**

**12. Offer to holder.**

- (1) Every take-over bid and issuer bid shall —
  - (a) be made to all holders of a class of the securities that is subject to the bid who are in The Bahamas; and
  - (b) delivered to all holders of the class of securities that, before the expiry of the bid, are convertible into the same class of securities subject to the bid whose last address of record is in The Bahamas.
- (2) No later than ten days upon the written request of the offeror, an offeree issuer shall deliver to the offeror a complete list of all of the holders of the class of securities subject to the bid as shown on the books of the offeree issuer.
- (3) A request made under subparagraph (2) shall be solely for the purposes of complying with subparagraph (1).

**13. Deposits and withdrawal of securities.**

- (1) An offeror shall accept deposits of securities from depositing security holders pursuant to the bid for at least twenty-five days from the date of the bid.
- (2) Securities deposited pursuant to the bid shall not be taken up by the offeror until the expiration of twenty-five days from the date of the bid.
- (3) Securities deposited pursuant to the bid may be withdrawn by or on behalf of a depositing security holder —

- (a) at any time, where the securities have not been taken up by the offeror;
  - (b) at any time before the expiration of fifteen days from the date of a notice of change or variation under rule 52(1); or
  - (c) if the securities have not been taken up and paid for by the offeror, after the expiration of forty-five days from the date of the bid.
- (4) Securities shall not be withdrawn pursuant to subparagraph (3) —
- (a) if the securities have been taken up by the offeror before the date that a notice is issued under rule 52(1);
  - (b) if a variation in the terms of a bid consists solely of an increase in the consideration offered for the securities subject to the bid and the time for deposit is not extended for a period greater than that required by rule 52(4); or
  - (c) in the circumstances described in rule 52(5);
- (5) The depositing security holder shall provide notice of withdrawal of any securities under paragraph (3) in writing to the depository designated under the bid and the offeror shall return the securities to the depositing security holder within seven days' receipt of notice.

**14. Taking up of bid and purchase of securities by offeror.**

- (1) Where the number of securities deposited pursuant to the bid is greater than the number of securities which the offeror is bound or willing to acquire under the bid, the offeror shall take up and purchase the number of securities deposited by each depositing security holder on a pro rata basis without regard to fractions.
- (2) Where an offeror purchases securities pursuant to rule 39(3), the securities purchased shall be included in determining whether the minimum number of securities to be deposited in the bid has been fulfilled, but shall not reduce the number of securities the offeror is bound under the bid to take up.
- (3) Subject to paragraphs (4) and (5) where all the terms and conditions of the bid have been complied with or waived, the offeror shall take up the securities deposited under the bid not later than seven days after the expiry of the bid.
- (4) Where subsequent to the date on which the offeror first takes up securities under the bid, a securities holder thereafter deposits securities pursuant to the bid, the offeror shall take up the additional securities within seven days of the deposit of the securities.

- (5) Any securities taken up by the offeror under the bid shall be paid for as soon as possible, and in any event not more than three business days, after the taking up of the securities.
- (6) An offeror shall not extend a bid unless he first takes up and pays for all securities deposited under the bid.
- (7) Notwithstanding paragraph (6), where the offeror —
  - (a) waives any terms or conditions of a bid; and
  - (b) extends the bid in circumstances where the rights of withdrawal are applicable,the bid shall be extended without the offeror first taking up the securities, which are subject to such rights of withdrawal.

**15. Publication of notice.**

- (1) Where all the terms and conditions of a bid have been complied with or waived, the offeror shall immediately publish a notice in at least one daily newspaper circulated widely in The Bahamas stating —
  - (a) that all of the terms and conditions of the bid have been complied with or waived;
  - (b) the approximate number of securities deposited;
  - (c) the approximate number of securities taken up or that will be taken up; and
  - (d) the amount and nature of the consideration paid or that will be paid for the securities.
- (2) Where a bid expires or lapses because a condition fails or the bid is withdrawn by the offeror, the offeror shall immediately publish a notice in at least one daily newspaper circulated widely in The Bahamas stating —
  - (a) that the bid has expired or lapsed due to failure of a condition and the condition that has failed; or
  - (b) that the bid has been withdrawn and the reason for the withdrawal; and
  - (c) the arrangements made by the offeror for the return of the securities deposited.
- (3) The offeror shall concurrently file a copy of the notice to be issued under paragraph (1) or (2) with the Commission.

**16. Financing of bid.**

Where the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall ensure, prior to bidding, that the

required funds are available to make full payment for all securities that the offeror intends to acquire.

**17. Confidentiality prior to public announcement.**

Any persons involved in any offer shall maintain confidentiality of that offer until a public announcement is made in accordance with these Rules.

**18. No frustrating action.**

- (1) Subject to paragraph (2), the directors of the offeree issuer shall not take any action in relation to the affairs of the offeree issuer which would —
  - (a) frustrate a bid; or
  - (b) deny security holders of the offeree the opportunity to consider the merits of a bid.
- (2) An offeree issuer shall not frustrate a bid unless —
  - (a) the offeree issuer's shareholders have approved the action in writing; or
  - (b) prior written consent has been obtained from the offeror; or
  - (c) the action is taken —
    - (i) pursuant to a contractual obligation entered into by the offeree issuer, or in the implementation of proposals approved by the directors of the offeree issuer and the obligations were entered into or the proposals were approved, prior to the offeree issuer receiving the take-over bid or becoming aware that the bid was imminent; or
    - (ii) as directed or approved by the Commission.
- (3) The request for approval of the shareholders for the purposes of paragraph (2) shall be in writing and include full particulars of the proposed action, the reasons for it, and the significance and effect of the resolution under these Rules.
- (4) An offeree issuer or offeror shall not be bound by an action which is deemed frustrating by virtue of —
  - (a) the shareholders of the offeree issuer having not approved such action in writing; and
  - (b) such action not being exempted under rule 19.
- (5) Where the Board of the offeree undertakes a frustrating action with the prior written approval of its shareholders, the offeror shall be entitled to either withdraw the offer or reduce the offer price where the —
  - (a) offer document expressly provides that the offeror may cancel the tender offer or reduce the tender offer price if the offeree issuer



- undertakes a frustrating action with the written approval of its shareholders;
  - (b) offeror notifies the Commission of its intention to withdraw the offer or reduce the offer price and the Commission does not object; and
  - (c) offeror, its concert parties and related persons did not vote, at a shareholders' meeting, in favour of the "frustrating action".
- (6) A director who frustrates a bid may be liable to a fine not exceeding three hundred thousand dollars.

#### **19. Exemptions from rule 18.**

In exercise of its authority under rule 18(2)(a), the board of the offeree issuer may, with the prior written approval of its shareholders —

- (a) issue securities;
- (b) issue or grant options in respect of any unissued securities;
- (c) create, issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for the securities of the offeree;
- (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of a material amount, or otherwise than in the ordinary course of business;
- (e) enter into contracts, including service contracts otherwise than in the ordinary course of business;
- (f) cause the offeree, any of its subsidiaries or associated companies to purchase or redeem any securities in the offeree or provide financial assistance for any such purchase.

#### **20. Communication of offer to shareholders.**

- (1) An offeror must file a copy of the offer document with the Commission and the relevant securities exchange.
- (2) Except where the Commission otherwise directs, the offeror shall within fourteen days of filing under paragraph (1) —
  - (a) send a copy of the offer document to the shareholders of the offeree issuer; and
  - (b) notify the board of the offeree issuer in writing.

#### **21. Reply to the offeree.**

Within twenty-one days from the date the offeror sends an offer document, the board of the offeree must transmit to its shareholders, a reply document containing —

- (a) the information prescribed in Form 3 set out in the *First Schedule*; and
- (b) any other information that it considers relevant to enable its shareholders to reach an informed decision.

**22. Communication to the Commission, securities exchange, and publications.**

- (1) An offeror must immediately inform the Commission and the relevant securities exchange in writing when —
  - (a) an offer has been revised or extended;
  - (b) an offer has expired; or
  - (c) upon an acquisition that gives rise to an obligation to make an offer under rule 29.
- (2) Within five days of the events in paragraph (1)(a) – (c) the offeror must publish a notice in at least one daily newspaper, circulated widely in The Bahamas, advising of those events, including —
  - (a) the identity of the offeror;
  - (b) the terms of the offer;
  - (c) the number of securities which the offeror has or controlled before the offer period;
  - (d) the number of securities for which acceptances of the offer have been received;
  - (e) the number of securities otherwise acquired by the offeror and any person acting in concert during the offer period; and
  - (f) the percentages of the relevant classes of securities and rights attached to voting securities represented by the numbers.

**23. Offer period.**

- (1) Subject to paragraph (2), an offer shall be open for at least twenty-five days and shall not exceed sixty days after the offeror sends the offer document to the shareholders of the offeree issuer, pursuant to rule 20.
- (2) The Commission may, upon application by the offeror and payment of the prescribed fee extend the offer period as it deems fit.

**24. Appointment of independent adviser.**

- (1) Where the offeror has sent the offer document to shareholders of the offeree issuer, pursuant to rule 20, the board of the offeree issuer shall appoint an independent adviser to act in the interests of its shareholders.
- (2) The independent adviser must be fit and proper and shall —

- (a) not hold any office or appointment in relation to the offeror or offeree; or
  - (b) not have any material conflict of interest with the offeror or offeree issuer.
- (3) The Board of the offeree issuer shall advise the Commission within four days of the appointment of the independent adviser.
- (4) Where the Commission thinks it is necessary, the Commission may direct the board of the offeree issuer to remove any person appointed as independent adviser.

**25. Functions of independent adviser.**

- (1) An independent adviser shall —
- (a) advise the board of the offeree as to whether an offer is fair and reasonable;
  - (b) carry out or cause to be carried out the valuation of the offeree; and
  - (c) report to the board of the offeree on the valuation and the method of valuation used, including reasons and assumptions made.
- (2) The offeree issuer shall attach a summary of the report prepared by the independent adviser to the reply document required in rule 21.
- (3) The report of the independent adviser and any summary thereof shall include a statement —
- (a) of the qualifications and expertise of the independent adviser;
  - (b) that the independent adviser has no conflict of interest that could affect his ability to provide an unbiased report; and
  - (c) that the summary of the report is fair and not misleading.
- (4) Notwithstanding paragraph (1) (b), the Commission, may direct the board of the offeree to appoint an independent valuer to carry out the valuation of the offeree.

**26. Availability of report.**

The independent adviser's report —

- (a) must be kept at the registered office of the offeree; and
- (b) must be made available upon the request of any shareholder or any person authorised, in writing, by a shareholder.

**27. Conditional and unconditional offers.**

- (1) Unless otherwise approved by the Commission, a voluntary offer to acquire all voting securities of an offeree issuer shall be conditional on the offeror holding a combination of —

- (a) voting securities already acquired or agreements to acquire voting securities; and
- (b) acceptances from securities holders to put up additional voting securities during the Takeover,

that will result in his holding a minimum of fifty per cent of the voting securities of the offeree .

- (2) If an offer is conditional, the offer document shall specify the last date when the offeror can declare the take-over offer unconditional.

**28. Extension of offer period where conditional offer becomes unconditional.**

Where a conditional offer becomes unconditional it shall remain open for acceptances for not less than fourteen days thereafter.

**29. Mandatory offer.**

- (1) A person must make a mandatory offer in writing where —
  - (a) that person or any persons acting in concert, whether by a series of transactions or otherwise, acquires securities which on their own or taken together with securities already held, carry thirty per cent or more of the voting rights of a company; or
  - (b) in any twelve-month period, that person or any persons acting in concert with that person, holds between thirty per cent and fifty per cent of the voting rights of a company and such person or persons acting in concert, acquires additional securities carrying more than one per cent of the voting rights of all securities of the offeree not already held by the offeror.
- (2) Where a person makes an offer under paragraph (1) the offeror shall —
  - (a) immediately publish a notice in accordance with rule 22; and
  - (b) inform the Commission and the relevant securities exchange, in writing, of the offer and the public notice.

**30. Waiver of mandatory offer.**

- (1) A person must apply, in writing, to the Commission to waive the requirement to make a mandatory offer pursuant to rule 29.
- (2) The Commission may waive the requirement to make a mandatory offer —
  - (a) where there is a change in control of the offeree as a result of a restructuring;
  - (b) where the Commission considers that an offer is unfair or contradictory to the market's interests; or

(c) in any other case, as the Commission may deem fit.

**31. Mandatory offers to be unconditional.**

Notwithstanding rule 33, a mandatory offer shall not be subject to any condition.

**32. Offer after withdrawal of previous offer.**

- (1) Unless approved by the Commission, where a person individually or together with a person acting in concert makes an offer to an offeree which subsequently is withdrawn or lapses, that person or a person acting in concert with the offeror shall not make a subsequent offer to the offeree within twelve months from the date on which such offer is withdrawn or lapses.
- (2) Unless approved by the Commission, where a person individually or together with a person acting in concert who has or is deemed to have effective control of a company, makes an offer to an offeree that becomes or is declared unconditional, that person or a person acting in concert with him shall not make a subsequent offer to the offeree within six months of the closure of the previous offer which was declared unconditional.

**33. Notice to dissenting shareholders.**

- (1) For the purposes of this rule, an offer shall not include securities held by the offeror at the date of the offer.
- (2) Where the offeror has acquired or contracted to acquire ninety per cent or more of the voting securities to which the offer relates, the offeror may acquire the voting securities of the dissenting shareholders.
- (3) The offeror must send the dissenting shareholders a notice, within twenty-eight days from the last day on which the offeree issuer shall accept the offer, that he will purchase the voting securities of the dissenting shareholders.
- (4) Where the offeror does not issue a notice pursuant to paragraph (3), the offeror must, within twenty-eight days from the last day on which the offeree issuer accepts the offer, inform any dissenting shareholder of the offeror's obligation to acquire the dissenting shareholder's securities under rule 37.
- (5) At the time the offeror issues a notice under paragraph (3) to the dissenting shareholders, the offeror shall send a copy of the notice to the offeree issuer.

**34. Request for statement.**

- (1) Any dissenting shareholder may request a statement, in writing, from the offeror within fourteen days after the notice is issued under rule 33(3).
- (2) The statement shall contain details of other dissenting shareholders as shown in the shareholders' register.
- (3) The offeror shall, provide a statement in writing to the dissenting shareholder within fourteen days after a request for a statement is made under paragraph (1).

**35. Compulsory acquisition.**

Subject to an application to the Court under rule 36, the offeror may compulsorily acquire the securities of any dissenting shareholder within twenty-one days of the issue of a notice under rule 33(3).

**36. Application to Court.**

Within twenty-one days from the date on which an offeror issues a notice under rule 33(3), a dissenting shareholder may make an application to the Court for an order regarding the offer.

**37. Protection of minority shareholders.**

Where the offeror has acquired or contracted to acquire ninety per cent or more of the voting rights attached to the securities to which the offer relates, any dissenting shareholder within twenty-eight days from the date the notice is issued under rule 33(3) may require the offeror to acquire his securities.

**38. Fees.**

The fees payable under these Rules are those set out in the *Second Schedule*.

**PART IV - REQUIREMENTS AND LIMITATIONS FOR  
ACQUISITIONS OR SALES & RESTRICTIONS ON  
DEALINGS**

**39. Restrictions on acquisitions during take-over and issuer bids.**

- (1) Subject to paragraph (3), during a bid period an offeror shall not acquire or make, or enter into any agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid otherwise than pursuant to the bid.

- (2) Paragraph (1) shall not prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during the bid period in reliance on an exemption under rule 58(a), (b), (c) or (d).
- (3) Beginning on the third business day following the date of a bid until the expiry of the bid, an offeror may, subject to paragraph (4), purchase the following on a securities exchange —
  - (a) securities; and
  - (b) securities convertible into securities,  
of the class that are subject to the bid.
- (4) An offeror may make a purchase, pursuant to paragraph (3), if —
  - (a) the intention to make such a purchase is stated in the take-over bid circular;
  - (b) the aggregate number of securities acquired under paragraph (3) does not constitute more than five per cent of the outstanding securities of that class as at the date of the bid; and
  - (c) each day after the close of business of the securities exchange, the offeror issues and files a notice to the public and with the Commission respectively, such notice must contain which securities have been purchased and disclose —
    - (i) the name of the purchaser;
    - (ii) the relationship of the purchaser and the offeror;
    - (iii) the number of securities purchased by the purchaser;
    - (iv) the highest price paid for the securities by the purchaser;
    - (v) the total number of securities owned by the purchaser as of the close of business of the securities exchange;
    - (vi) the aggregate number of securities purchased through the facilities of the securities exchange by the purchaser during the currency of the bid; and
    - (vii) the average price paid for the securities that were purchased by the purchaser through the facilities of the securities exchange during the currency of the bid.
- (5) Paragraph (1) does not apply where, under an agreement between the offeror and security holder, the security holder is required to deposit his securities in accordance with the terms and conditions of a formal take-over bid.

#### **40. Restrictions on pre-bid and post-bid acquisitions.**

- (1) Where within the ninety days immediately preceding a formal bid, the offeror acquires beneficial ownership of securities of the class subject to

the bid pursuant to a transaction not generally available on identical terms to holders of that class of securities —

- (a) the offeror shall offer —
    - (i) for securities deposited under the bid, consideration at least equal to and in the same form as the highest consideration that was paid on a per security basis under the prior transactions; or
    - (ii) at least the cash equivalent of such consideration; and
  - (b) the offeror shall offer to acquire under the bid at least that percentage of securities which is equal to the highest percentage of securities of that class beneficially owned by the seller at the time of the prior transaction and acquired by the offeror.
- (2) Paragraph (1) does not apply to an offeror under a take-over bid if the prior transaction was —
- (a) a trade in a security of the issuer that had not been previously issued; or
  - (b) a trade by or on behalf of the issuer in a previously issued security of that issuer that had been redeemed or purchased by or donated to that issuer.
- (3) An offeror shall not acquire beneficial ownership of securities of the class that was subject to the bid —
- (a) until twenty-eight days after formal bid has expired; and
  - (b) unless the proposed transaction is generally available to holders of that class of securities on terms that are identical to terms under the bid.

#### **41. Sales during bid prohibited.**

- (1) Except pursuant to a bid, an offeror shall not sell or make or enter into any agreement, commitment or understanding to sell any securities of the class subject to the bid, on and from the day of the announcement of the offeror's intention to make the bid until its expiration.
- (2) Notwithstanding paragraph (1), an offeror may before the expiry of a bid, make or enter into an arrangement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to the bid, after the expiry of the bid, if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be.
- (3) Paragraph (1) does not apply to an offeror under an issuer bid in respect of the issue by the offeror of securities pursuant to a dividend plan, dividend reinvestment plan, purchase plan or another similar plan.



**42. Exemptions to rules 39(1) and (2), 40 and 41.**

Rules 39(1) & (2), 40 and 41 inclusive do not apply to an associate of a person or an associate or affiliate of such security holder that is not acting jointly or in concert with such person, in respect of the formal bid other than a bid referred to in rules 57(1)(iv) or 58(g).

**43. Dealings before the offer.**

- (1) No person who has confidential price sensitive information concerning the offer between the period that an offer is contemplated and the public announcement of the offer or the termination of the take-over discussions shall deal in the securities of the offeree.
- (2) Notwithstanding paragraph (1), such restriction shall not apply to an offeror if such dealings are made for the purposes of the offer unless the offeror is a director or employee of the offeree.
- (3) Any person who has inside information about an offer shall not deal in the securities of the offeror or the offeree until a public announcement concerning the offer has been made.

**44. Dealings during the offer.**

An offeror shall not enter into any agreement relating to the purchase or sale of securities of the offeree at any time during the offer period.

**45. Restrictions on non-cash offers.**

Where consideration offered for securities of the offeree consists only of securities of the offeror which are traded on a securities exchange, the offeror or any person acting in concert shall not engage in any purchase of the securities of the offeror for the duration of the offer period unless the offeror declines to proceed with the offer.

**46. Approval required for withdrawal of offer.**

- (1) Except with the prior approval of the Commission, any offer, which has been made in accordance with these Rules, shall not be withdrawn, unless the offer was expressed as being subject to the prior fulfilment of a specific condition and that condition has not been met, through no fault of the offeror.
- (2) Where an offeror withdraws an offer or an offer lapses because of non-fulfilment of a condition, the offeror shall issue a notice in pursuant to rule 15(2).

## PART V - BID CIRCULARS

### 47. Take-over bid circular.

- (1) An offeror shall send a take-over or issuer bid circular to all shareholders and to the offeree within fourteen days of the commencement date of the bid.
- (2) A take-over or issuer bid circular shall contain the information prescribed in Forms 1 and 2 set out in the *First Schedule*.

### 48. Directors' circular.

- (1) The Directors of an offeree shall, within twenty-one days after the bid circular has been delivered to the offeree's shareholders, prepare and deliver a directors circular to every person entitled to receive the take over bid under rule 12(1).
- (2) The board of directors shall consider the report of the independent adviser and make a recommendation in good faith to the shareholders which shall include —
  - (a) a recommendation to accept or to reject the take-over bid and the reasons for their recommendation; or
  - (b) a statement that they are unable to make or will not make a recommendation and, if no recommendation is made, the reasons for not making a recommendation.
- (3) Where there is divergence of views among the directors of the offeree as to the merits of the offer, a statement of the divergent views shall be attached to the Director's circular.
- (4) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer delivers with the recommendation, a circular, set out in Form 4 of the *First Schedule*.
- (5) If an individual director or officer submits a circular under paragraph (3) or a notice of change under rule 53(2) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to offeree's shareholders.
- (6) A directors' circular shall contain the information prescribed in Form 3 and a director's or officer's circular shall contain the information prescribed in Form 4 as set out in *First Schedule*.

### 49. Filing with Commission and delivery to offeree issuer.

- (1) A take-over or issuer bid circular and any notice of change or variation shall be filed with the Commission and the relevant securities exchange

on the day such bid or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.

- (2) A take-over or issuer bid circular and any notice of change or variation shall be delivered to the offeree issuer at its registered office on the day such bid or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.
- (3) Every directors' circular and every individual director's or officer's circular or any notice of change or variation shall be filed with the Commission and the relevant securities exchange on the day such circular or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.
- (4) Every directors' circular and every individual director's or officer's circular or any notice of change or variation shall be delivered to the offeree issuer at its registered office on the day such circular or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.
- (5) Where a take-over or issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation is required to be delivered, provided or sent, it shall be —
  - (a) mailed by registered post to the intended recipient;
  - (b) personally delivered to the intended recipient; or
  - (c) provided in such other manner as the Commission may approve.
- (6) Any circular or notice mailed or delivered in accordance with subparagraph (5) is deemed for the purposes of rules 12, 47 and 48 to have been delivered to all or substantially all of the persons entitled to receive it and deemed to be and dated as of the date on which it was mailed or delivered.
- (7) Where an expert's report, valuation, appraisal or statement is included in or accompanies a take-over or issuer bid circular, director's or director's or officer's circular, or a notice of change or variation in respect of a take-over or issuer bid, written consent from that expert for its use must concurrently be filed with the Commission.

#### **50. Valuation requirements.**

- (1) Unless exempted by the Commission every take-over and issuer bid circular to which this rule applies shall contain —
  - (a) a summary of a formal valuation of the offeree issuer; and
  - (b) an outline of every prior valuation of the offeree issuer made within twenty-four months preceding the date of the take-over or issuer bid

- including a description of the source and circumstances under which the valuation was made.
- (2) Subject to paragraph (3), a formal valuation —
    - (a) shall not be dated more than one hundred and twenty days before the date of the take-over or issuer bid; and
    - (b) shall contain appropriate adjustments for material intervening events.
  - (3) A formal valuation may be dated more than one hundred and twenty days before the date of the take-over or issuer bid where —
    - (a) it is accompanied by a letter from the independent valuer confirming that the independent valuer has no reasonable ground to believe that any intervening event has materially affected the value or range of values determined in such valuation; or
    - (b) there has been such an event, explaining the resultant change in the value or range of values in the valuation.
  - (4) Unless exempted by the Commission a formal valuation and a letter of confirmation, referred to in paragraph (3), if any, shall be filed with the Commission concurrently with the filing of the circular in which reference to the valuation is made.

## **PART VI - VARIATION OF OFFERS**

### **51. Variation of offer.**

- (1) Subject to the prior approval of the Commission the consideration offered may be varied for the securities proposed to be acquired, where —
  - (a) the value or amount of cash, securities, debentures or the option to acquire unissued securities, which is offered as consideration is increased; and
  - (b) a combination of any of the above is offered, by increasing the amount or value of any component of the offer.
- (2) Where the consideration offered for the securities to be acquired under an offer is varied under paragraph (1), all the shareholders of an offeree shall be entitled to receive the consideration as so varied.
- (3) Subject to the prior approval of the Commission and pursuant to rule 23, an offeror may vary an offer by extending the period during which it remains open.
- (4) In the event of a variation of an offer, the offeror shall immediately give notice of the variation to the offeree and its shareholders.

- (5) Subject to rule 23, the revised offer shall remain open for at least fourteen days from the day of the notice of the variation.
- (6) An offeror shall vary an offer no later than seven days after the offeree issuer's board sends the reply document to the shareholders, pursuant to rule 21.

**52. Variation of terms of offer and offeror's circular.**

- (1) Where there is a change or variation in a take-over or issuer bid circular or in any notice of change or variation —
  - (a) before the expiry of the take-over or issuer bid; or
  - (b) after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities; and
  - (c) the change or variation would reasonably be expected to affect the decision of the shareholders of the offeree issuer to accept or reject the bid,the offeror shall deliver a notice of the change to every person to whom the circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change.
- (2) Paragraph (1) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror, unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.
- (3) Where there is a variation in the terms of a take-over or issuer bid, including any extension of the period during which securities may be deposited under the bid and whether or not the variation results from the exercise of any right contained in the bid, a notice of the variation shall be delivered to every person to whom the take-over or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation.
- (4) Subject to paragraph (5), where there is a variation in the terms of a take-over or issuer bid, the period during which securities may be deposited pursuant to the bid shall not expire before fifteen days after the notice of variation has been delivered.
- (5) Paragraph (4) does not apply to a variation in the terms of a bid consisting solely of the waiver of a condition, where the consideration offered for the securities that are subject to the bid consists solely of cash.
- (6) An offeror shall not vary the terms of a take-over or issuer bid after the expiry of the bid period or any extension thereof unless the variation is a waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror.

- (7) Where there is a variation in the terms of a take-over or issuer bid by the offeror in accordance with paragraph (6), the provisions of paragraph (3) do not apply in respect of that bid if —
  - (a) the offeror has published a notice of the waiver in one newspaper widely distributed in The Bahamas during each day of the five days immediately following the expiration of the bid period or any extension thereof during which securities may be deposited pursuant to the bid; and
  - (b) the consideration offered for the securities consists solely of cash.

**53. Variation of director's circular.**

- (1) Where there is a change or variation in a director's circular or in any notice of change —
  - (a) before the expiration of a take-over bid; or
  - (b) after the expiration of the bid, but before the expiry of all rights to withdraw the securities deposited under the bid; and
  - (c) the change or variation would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid,the offeree issuer's board of directors shall immediately deliver a notice of the change to every person to whom the circular was required to be sent disclosing the nature and substance of the change.
- (2) An individual director or officer must immediately deliver a notice of change, to the board of directors where—
  - (a) there has been a change in the information contained in an individual director's or officer's circular; and
  - (b) that change would reasonably be expected to affect the decision of the security holders to accept or reject a bid.

**54. Content of notice of change or notice of variation.**

- (1) A notice of change or variation required under rule 52(1) must contain —
  - (a) a description of the change or variation in the terms of the take-over or issuer bid or in the information contained in —
    - (i) the take-over bid circular;
    - (ii) the issuer bid circular;
    - (iii) any notice of change previously delivered; or
    - (iv) any notice of variation previously delivered;
  - (b) the date of the change or variation;
  - (c) the date up to which securities may be deposited;

- (d) the date by which securities deposited must be taken up by the offeror;
  - (e) a description of the rights of withdrawal that are available to security holders; and
  - (f) a signed certificate in the same form as is required to be contained in a take-over or issuer bid circular, amended to refer to the initial circular and to all subsequent notices of change or variation.
- (2) A notice of change or variation required under rule 53(1) must contain —
- (a) a description of the change in the information contained in —
    - (i) the directors' circular;
    - (ii) any notice of change previously delivered;
    - (iii) the director's or officer's circular; or
    - (iv) any notice of change previously delivered; and
  - (b) a signed certificate in the same form as is required to be contained in a directors' circular or director's or officer's circular amended to refer to the initial circular and to all subsequent notices of change or variation.

## **PART VII - EXEMPTIONS**

### **55. Exemptions by the Commission.**

- (1) The Commission may, subject to such terms and conditions as the Commission deems fit, grant an exemption from any requirement of these Rules where it is satisfied that such an exemption would be appropriate in the circumstances.
- (2) In relation to an exemption for a proposed acquisition, an offeror must —
  - (a) apply, in writing to the Commission for the exemption; and
  - (b) set out the grounds on which the exemption is being sought.

### **56. Notification of decision.**

- (1) The Commission may impose any conditions it deems fit on exemptions granted pursuant to rule 55.
- (2) The Commission must publish any exemption granted under rule 55 in accordance with the provisions of section 13(j) in the Act.

### **57. Take-over bid exemptions.**

- (1) A take-over bid is exempt from rules 7, 12, 13, 14 16, 47, 48 and 49 if —
  - (a) the offeree issuer is not a reporting issuer;

- (b) there is not a published market in respect of the securities that are the subject of the bid; and
- (c) the number of holders of securities of that class is fewer than fifty not including holders who —
  - (i) are employed by the offeree issuer or is an affiliate of the offeree issuer; or
  - (ii) were formerly employed by the offeree issuer or an affiliate of the offeree issuer and while employed was and continues to hold securities in the offeree issuer;
- (d) the bid meets all of the following conditions —
  - (i) there are fewer than fifty holders of securities of the class subject to the bid, whose last address as shown on the books of the offeree issuer is in The Bahamas;
  - (ii) the securities held by such holders constitute, in the aggregate, less than ten per cent of the outstanding securities of that class;
  - (iii) the bid complies with the laws of a jurisdiction that is recognized for the purposes of this paragraph by the Commission; and
  - (iv) all material relating to the bid sent by the offeror to holders of securities of the class that is subject to the bid is concurrently filed with the Commission and sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in The Bahamas; or
  - (v) the bid is otherwise exempted by these Rules.

**58. Issuer bid exemptions.**

Subject to these Rules, an issuer bid is exempt from rules 7, 12, 13, 14, 16, 47 and 49 if any of the following apply —

- (a) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching to them which permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities;
- (b) the purchase, redemption or other acquisition of the securities is to meet sinking fund or purchase fund requirements;
- (c) the purchase, redemption or other acquisition is —
  - (i) required by the instrument creating or governing the class of securities; or



- (ii) required by the statute under which the issuer was incorporated, organized or continued;
- (d) the purchase or redemption of the securities is pursuant to a right of the owner of the securities to require the issuer to redeem or repurchase the securities;
- (e) the securities are acquired from a current or former employee of the issuer or of an affiliate of the issuer, and if there is a published market in respect of the securities —
  - (i) the value of the consideration paid for any of the securities acquired is not greater than the market price of the securities at the date of the acquisition, determined in accordance with these Rules; and
  - (ii) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by paragraph (d) is not greater than five per cent of the securities of that class issued and outstanding at the beginning of the period;
- (f) the number of holders of securities of that class is fewer than fifty not including holders who —
  - (i) are employed by the offeree issuer or is an affiliate of the offeree issuer; or
  - (ii) were formerly employed by the offeree issuer or an affiliate of the offeree issuer and while employed was and continues to hold securities in the offeree issuer;
- (g) the bid meets all of the following conditions —
  - (i) there are fewer than fifty holders of securities of the class subject to the bid, whose last address as shown on the books of the offeree issuer is in The Bahamas;
  - (ii) the securities held by such holders constitute, in the aggregate, less than ten per cent of the outstanding securities of that class;
  - (iii) the bid complies with the laws of a jurisdiction that is recognized for the purposes of this paragraph by the Commission;
  - (iv) all material relating to the bid sent by the offeror to holders of securities of the class that is subject to the bid is concurrently filed with the Commission and sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in The Bahamas;
  - (v) the bid is otherwise exempted by these Rules.

## PART VIII - SPECIAL REPORTING AND LIMITATIONS ON ACQUISITIONS

### 59. Reports of acquisitions.

- (1) Except where pursuant to a formal bid an offeror together with securities he previously owned —
- (a) acquires beneficial ownership of ten per cent or more of the outstanding securities; or
  - (b) acquires the power to exercise control or direction over securities or securities convertible into voting or equity securities of any class of a reporting issuer,

the offeror must immediately publish in at least one daily newspaper circulated widely in The Bahamas and file with the Commission a notice including the following information —

- (i) the name of the offeror;
  - (ii) the number of securities in the offeree issuer acquired by the offeror resulting in ownership of that class of securities exceeding ten per cent;
  - (iii) the beneficial ownership of, and the control and direction over, any of the securities of the offeree issuer, by the offeror and all persons acting jointly or in concert with the offeror, immediately after the acquisition;
  - (iv) the name of the market in which the acquisition took place;
  - (v) the purpose of the offeror and all persons acting jointly or in concert with the offeror in making the acquisition, including any intention to increase the beneficial ownership of, or control or direction over, any of the securities of the offeree issuer;
  - (vi) if applicable, a description of any change in a material fact set out in a previous notice issued pursuant to this rule; and
  - (vii) the names of all persons acting jointly or in concert with the offeror in connection with the acquisition of securities of the offeree issuer.
- (2) If an offeror is required to file a report under paragraph (1) and the offeror —
- (a) acquires beneficial ownership or the power to exercise control or direction over an additional two per cent or more of the outstanding securities or securities convertible into the outstanding class; or
  - (b) there is a change in any other material fact in such a report,

the offeror must immediately publish a notice in accordance with paragraph 60(1).

**60. Acquisitions during bid by other offeror.**

Where a formal bid for voting or equity securities of an offeree issuer who is a reporting issuer —

- (a) has not expired; and
- (b) an offeror, other than the person making the bid, acquires —
  - (i) securities, which when added to securities of the outstanding class of securities owned by the offeror, aggregates five per cent or more of the beneficial ownership; or
  - (ii) the power to exercise control or direction over the class of securities subject to the bid,

the offeror must not later than the opening of trading on the next day publish a notice in accordance with paragraph 59(1).

## **PART IX - MISREPRESENTATION**

**61. Information to be publicly corrected.**

An offeror or offeree must publicly correct any information provided by it to the public which is in whole or part misleading or inaccurate.

**62. Liability for misrepresentation.**

- (1) If a take-over or issuer bid circular sent to the security holders of an offeree issuer as required by these Rules or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror and or alternatively a right of action for damages against —
  - (a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;
  - (b) every person whose consent in respect of the circular or notice, as the case may be, has been filed with the Commission pursuant to a requirement of these Rules but only with respect to reports, opinions or statements that have been made by the person; and
  - (c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in subparagraph (a).

- (2) Where a directors circular or a director's or officer's circular delivered to the security holders of an offeree issuer pursuant to these Rules or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder may elect to exercise a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.
- (3) No person is liable under paragraph (1) or (2) if the person proves that the security holder had knowledge of the misrepresentation.
- (4) No person, other than the offeror, is liable under paragraph (1) or (2) if that person proves that —
  - (a) the take-over or issuer bid circular, directors' circular or director's or officer's circular was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable notice to security holders that it was so sent;
  - (b) after the sending of the take-over or issuer bid directors' circular or director's or officer's circular, on becoming aware of any misrepresentation, he withdrew the consent thereto and gave reasonable notice of the withdrawal and the reason therefore;
  - (c) with respect to any part of the circular purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that the circular or part of the circular —
    - (i) contained a misrepresentation;
    - (ii) did not fairly represent the report, opinion or statement of the expert; or
    - (iii) was not a fair copy of or extract from the report, opinion or statement of the expert;
  - (d) with respect to any part of the circular purporting to be made on his authority as an expert or purporting to be a copy of or an extract from his report, opinion or statement as an expert, but that contains a misrepresentation attributable to a failure to represent fairly his opinion or statement as an expert —
    - (i) the person had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his report, opinion or statement as an expert; or
    - (ii) on becoming aware that such part of the circular did not fairly represent his report, opinion or statement as an expert, the person forthwith advised the Commission and gave

reasonable notice that such use had been made and that he would not be responsible for that part of the circular; or

- (iii) with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document and he had reasonable grounds to believe and did believe that the statement was true.

(5) No person is liable under subsection (1) —

- (a) where the misrepresentation is contained in a part of the circular or notice of change or variation made on the authority of an expert or based on an expert's report, if the person had reasonable grounds to believe and did believe, up to the time the prospectus was filed, that —

- (i) there was no misrepresentation;
- (ii) the language in the prospectus fairly represented and was a correct and fair copy of, or extract from, the expert's report; and
- (iii) the expert making the statement or preparing the report, opinion, valuation —
  - (aa) was competent to make it;
  - (bb) had consented as required under rule 49(7); and
  - (cc) had not withdrawn that consent; or

- (b) where the misrepresentation is contained in what purports to be a statement made by a public official or a copy of, or extract from, a public official document, if the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document and the person had reasonable grounds for believing it to be true.

(6) The liability of all persons referred to in paragraphs (1) and (2) is joint and several as between themselves with respect to the same cause of action.

(7) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, a court is satisfied that it would not be just and equitable.

## PART X - SPECIAL POWERS & APPLICATIONS

### 63. Applications to the Commission.

- (1) If the Commission considers that a person has not complied or is not complying with these Rules, the Commission may make an order —
  - (a) restraining the distribution of any record used or issued in connection with a take-over or issuer bid;
  - (b) requiring an amendment to or variation of any record used or issued in connection with a take-over or issuer bid and requiring the distribution of any amended, varied or corrected record; and
  - (c) directing the person to comply with these Rules or restraining that person from contravening these Rules.
- (2) Where the Commission considers that to do so would not be prejudicial to the public interest, the Commission may —
  - (a) decide for the purposes of rule 7(2) —
    - (i) that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder; and
    - (ii) that the agreement, commitment or understanding may be entered into notwithstanding rule 7(2);
  - (b) vary any time period set out in these Rules; and
  - (c) order that a person or class of persons be exempt from one or more of the requirements of these Rules.
- (3) An order under paragraph (1) or (2) may be made on application by an interested person or on the Commission's own motion/action.

### 64. Application to the Court.

An interested person may apply to the Court for an order —

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of these Rules;
- (b) rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;
- (c) requiring any person to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
- (d) prohibiting any person from exercising any or all of the voting rights attaching to any securities; and

- (e) requiring the trial of an issue.

## **PART XI - MINORITY SECURITY HOLDERS' RIGHTS**

### **65. Minority security holders' right to be bought out by offeror.**

- (1) Where ninety per cent or more of a class of voting or equity securities of the offeree issuer are acquired by or on behalf of the offeror, the offeror's affiliates and the offeror's associates, the holder of any securities of that class not counted for the purposes of calculating such percentage shall be entitled to require the offeror to acquire the security holder's securities of that class.
- (2) Where an offeror becomes aware that security holders of an offeree issuer are entitled to require the offeror to acquire their securities under paragraph (1), the offeror shall within thirty days send each security holder written notice of their right to require the offeror to acquire his securities within sixty days after the date of such notice.
- (3) The notice sent by the offeror under paragraph (2) must —
  - (a) set out the consideration that the offeror is willing to pay for the securities;
  - (b) give the basis for arriving at the price;
  - (c) state the location where any supporting material used for arriving at the price may be examined and extracts taken therefrom by the security holder or a duly authorized agent; and
  - (d) state that if the security holder is not satisfied with the price offered by the offeror in the notice, the security holder is entitled to have the fair value of his securities fixed by the Court.
- (4) Where a security holder receives a notice under paragraph (2) and wishes the offeror to acquire his securities, the security holder may, within sixty days after the date of the notice —
  - (a) elect to accept the price offered by the offeror by giving notice to the offeror; or
  - (b) notify the offeror that the security holder wishes to have the fair value of his securities fixed by the Court.
- (5) Where a security holder wishes to have the fair value of his securities fixed by the Court, the offeror must make an application to the Court within ninety days after the date of the notice under paragraph (2).
- (6) If an offeror fails to send notice under paragraph (2), a security holder, after giving the offeror thirty days' notice of intention so to do, may apply to the Court to have the fair value of his securities fixed.

- (7) If an offeror fails to make an application to the Court as required under paragraph (5) a security holder may make the application.

## **PART XII - TAKE-OVER ADVISORY PANEL**

### **66. Establishment of Take-over Advisory Panel.**

- (1) Any offeror may establish an independent ad-hoc Take-over Advisory Panel to make recommendations to the Commission on an application under rule 62 or on any matters relating to the administration of these Rules.
- (2) The offeror must pay all costs and expenses related to the establishment, administration and operation of a Take-Over Advisory panel.
- (3) The Take-over Advisory Panel shall consist of —
  - (a) a Chairperson; and
  - (b) not more than two other members,  
having experience in the field of business, finance or law and shall be appointed by the Commission.
- (4) Each member of the Panel must swear an oath of confidentiality as set out in the *Third Schedule*.

### **67. Functions.**

The Take-over Advisory Panel must examine any matter referred to it by the Commission and submit its recommendations to the Executive Director of the Commission within thirty days from the date of its establishment under rule 66.

### **68. Administration.**

The Commission may extend such technical, administrative and secretarial assistance as may be necessary for the proper discharge of the functions of a Take-over Advisory Panel.

### **69. Disclosure of interests.**

- (1) In carrying out its duties and activities members of the Take-over Advisory Panel must act honestly, fairly, with integrity, and in the best interests of the investing public.
- (2) A member who is in any way, whether directly or indirectly, interested in the offeree issuer or any offeror involved in the take-over bid must avoid any real or potential conflicts that a reasonable person may consider sufficiently material to affect the member's judgement.



- (3) A member with an interest in a matter must not take part in any deliberations or vote on the matter and must leave the room during such deliberations.
- (4) For the purposes of this section, a member of a Take-over Advisory Panel shall be deemed to have an interest in a matter if the member, the member's spouse or child, or any other relative that resides in the same dwelling as the member or the member's nominee, is a security holder or partner in, or an officer or director of, an offeror or offeree issuer involved in the take-over bid that the member has been appointed to provide advice in respect of.

#### **70. Enforcement.**

If there appears to be a breach of these Rules, which has been reported to or discovered by the Commission, the alleged offender must appear before the panel for a hearing and such hearing must be conducted in a manner prescribed by the Commission.

### **FIRST SCHEDULE**

**(Rules 47 & 48)**

#### **OFFER DOCUMENT**

The offer document shall contain the following statements in a prominent position:

1. "Offer document on the Take-over Scheme proposed by (offeror) for the shareholders of (offeree) whereby (offeror) offers to purchase securities from the shareholders of the offeree for a cash consideration or alternatively in the case of non-cash consideration, the exchange of share ratio."
2. "This offer is not a prospectus. This offer document sets out the terms of the offer made by (offeror) and has been prepared in compliance with the Laws of The Bahamas."
3. "The absence of objection from the Securities Commission of The Bahamas shall in no way imply that the Commission has conveyed its approval, or otherwise vouched for the financial soundness, accuracy or opinions expressed in this offer document with regards to this offer."
4. "The board of (offeror) accepts full responsibility for the correctness of the information contained in the offer document, and have made all

reasonable enquiries, and states that to the best of its knowledge and belief, there is no material fact, the omission of which would make any statement herein, whether fact or opinion, misleading.”

5. “The original of the offer document is available for inspection during the normal business hours at the registered office of (offeror) at (address of offeror).”

## FORM 1

### TAKE-OVER BID CIRCULAR

Provide the following information and documentation:

Item 1 - The name, address and telephone number of the offeror, any adviser or any other person who may be acting for, or in concert with the offeror. If either the offeror or any person acting in concert is a company, state the names and addresses of its directors, controlling shareholders, and beneficial owners.

Item 2 - The name of offeree issuer.

Item 3 – Offer period: The date the offer is open for acceptance to the date the offer closes.

Item 4 - Securities subject to bid:

The class of securities that are the subject of the bid and a description of the rights of the holders of any other class of securities that have a right to participate in the offer.

Item 5 - Ownership of securities of offeree issuer: The number, designation and percentage of outstanding securities of any class of securities of the offeree issuer, owned or over which control or direction is exercised by the offeror and by each director and senior officer of the offeror, as well as by:

- (a) each associate of a director or senior officer of the offeror;
- (b) any person holding more than ten per cent of any class of voting or equity securities of the offeror; and
- (c) any person acting jointly or in concert with the offeror, in each case where no securities are so owned, directed or controlled, a statement to that effect.

Item 6 - Trading in securities of offeree issuer:

Where known after reasonable inquiry has been made, the number and designation of any securities of the offeree issuer traded by a person referred to in Item 5 during the six-month period preceding the date of the Take-over bid, including the purchase or sale price and the date of each such transaction. If no such securities were traded, state so.

Item 7 - Commitments to acquire securities of offeree issuer: Disclose all arrangements, agreements, commitments, and understandings, (as well as all terms and conditions of same) made by the offeror, and, by the persons referred to in Item 5 to acquire voting or equity securities of the offeree issuer.

Item 8 - Terms and conditions of the bid: The terms of the Take-over bid including the particulars of each conditions where the obligation of the offeror to take up and pay for securities under the take-over bid is conditional.

Item 9 – Payment: Where the offer is in cash, or includes an element of cash, the offer document shall include confirmation by an adviser that the resources available to the offeror are sufficient to satisfy full acceptance of the offer. the particulars of the method and time of payment of the cash or other consideration to be paid for the securities of the offeree issuer.

Item 10 - Exchange of securities offer

In the case of an exchange of securities offer, the following information about the offeror:

- (i) turnover, net profit or loss, exceptional items, minority interests, dividends, earnings per share and dividends per share for the last three financial years;
- (ii) a statement of the assets and liabilities shown in the last published audited accounts;
- (iii) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
- (iv) details relating to the items referred to in (i) above in respect of any interim statement or preliminary public announcement made since the last published audited accounts; and
- (v) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures. Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be stated.

The Commission may require that the offer document contains a description of the financing arrangements, where applicable.

Item 11 - Further information in cases of exchange of securities offers

The following additional information shall be given by the offeror when it is offering its securities in exchange for the securities of the offeree:

- (a) the nature and particulars of its business;
- (b) the date and country of its incorporation;
- (c) the address of its registered office in The Bahamas;
- (d) the stated capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting;
- (e) whether or not the securities being offered will rank pari passu with the existing issued securities of the company, and if not, a precise description of how the securities will rank for dividends and capital;
- (f) the number of securities issued since the end of the last financial year of the company;
- (g) during the period commencing six months preceding the commencement of the offer period and ending on the day prior to the posting of the offer document, the highest and lowest closing market prices in respect of the offeror's securities;
- (h) details of any restructuring of capital during the two financial years preceding the date of the offer;
- (i) details of any bank overdrafts or loans, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect;
- (j) details of any litigation to which the company is, or may reasonably become, a party;
- (k) details of every material contract entered into by the offeror and its subsidiaries during the two-year period preceding the date of the offer, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company;
- (l) how and when the documents of title to the securities will be issued; and
- (m) whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree

or by any other associated transaction. If there will be no effect, this fact shall be expressly stated.

- Item 12 - Right to withdraw deposited securities: Describe the withdrawal rights of the security holders of the offeree issuer under the bid.
- Item 13 - Trading in the securities to be acquired: State the principal market or markets for the securities of the offeree issuer sought to be acquired pursuant to the take-over bid and indicate any change in a principal market that is planned following the bid, including but not limited to listing or de-listing on a securities exchange. Furnish a summary showing the volume of trading and price range of the securities in the six-month period preceding the date of the take-over bid. State the date that the take-over bid to which this circular relates was announced to the public and the market price of the securities immediately before such announcement.
- Item 14 - Relationships and arrangements between the offeror and the directors and officers of Offeree Issuer: Provide details of any material business relationship between the offeror and offeree issuer. Also state the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeror and any of the directors or senior officers of the offeree issuer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to their remaining in or retiring from office, if the take-over bid is successful.
- Item 15 - Material changes in affairs of offeree issuer: State the particulars of any information known to the offeror that indicates any material change in the affairs of the offeree issuer since the date of the last published interim or annual financial statement of the offeree issuer.
- Item 16 - Valuation: Where a valuation is provided pursuant to a legal requirement or otherwise -
- (a) include a summary of the valuation disclosing the basis of computation, scope of review, relevant factors and their values, and the key assumptions upon which the valuation is based; and
  - (b) advise where copies of the valuation are available for inspection and state that a copy of the valuation will be sent to any registered holder of securities of the offeree issuer sought to be acquired.
- Item 17 - Securities of an offeror or other issuer to be exchanged for securities of offeree Issuer:
- (1) include the information required by the Commission to be contained in a prospectus in respect of the offeror or issuer

whose securities are being offered in exchange for the securities of the offeree issuer.

- (2) include the financial statements of the offeror or other issuer required to be included in such prospectus, including, where the consideration is securities of the offeror:
  - (a) a pro forma balance sheet and income statement of the offeror giving effect to the exchange of securities as at the date of the most recent balance sheet of the offeror that is included in the circular based on the information in the most recent audited financial statements of the offeree issuer;
  - (b) a description of the basis of preparation of the pro forma financial statements; and
  - (c) the basic and fully diluted earnings per share based on the pro forma financial statements.
- (3) State the particulars of any information known to the offeror that indicates any material change in the affairs of the offeror or other issuer since the date of the last published interim or annual financial statement of the offeror or other issuer.

Item 18 - Right of appraisal and acquisition: State any rights of appraisal the security holders of the offeree issuer have under the laws governing the offeree issuer and state whether or not the offeror intends to exercise any right of acquisition the offeror may have.

Item 19 - Market purchases of securities: Confirm whether or not the offeror intends to purchase in the market securities that are the subject of the take-over bid.

Item 20 - Material changes in the affairs of offeree issuer: Disclose the particulars of any plans or proposals of the offeror for material changes in the affairs of the offeree issuer, including for example, any proposal to liquidate the issuer, to sell, lease or exchange all or a substantial part of its assets, to amalgamate it with any other business organization or to make any material changes in its business, corporate structure (debt or equity), management or personnel.

Item 21 - Other material facts: Describe any other matter that has not previously been generally disclosed and is known to the offeror but which would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 22 - Disclosure in accordance with Form 3: In the case of a take-over bid to which item 18 applies, include the disclosure required by Form 3, appropriately modified.

Item 23 - Approval of take-over bid circular: State whether the contents of the take-over bid circular have been approved by its board of directors and whether the sending of the take-over bid circular to the security holders of the offeree issuer has been authorized by its board of directors.

Item 24 - Where the take-over bid is made by or on behalf of an individual, a statement in the following form: "I/We, the undersigned, hereby affirm that to the best of my/our information, knowledge and belief, the contents herein and any attachments provided herewith are true, correct and not misleading."

Item 25 - Disclaimer:

- (1) The offeror shall in clear terms include, in the offer document, the following statement "To the best of my/our knowledge and belief, after making proper enquiry, the information contained in or accompanying the take-over notice of the offer document is in all material respect true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Securities Industry (Take-over) Rules, 2019."
- (2) Where the offeror is a company or corporate body, the statement under paragraph (1) shall be signed by at least 2 directors.

Item 26 - Date of Take-over Bid Circular.

## **FORM 2**

### **ISSUER BID CIRCULAR**

Provide the following information and documentation:

Item 1 - Name of issuer:

Item 2 - Securities sought: State the class and number of securities or principal amount of debt securities sought.

Item 3 - Time period: State the dates on which the issuer bid will commence and close.

Item 4 - Method of acquisition: State the method by which the securities will be acquired.

Item 5 - Consideration offered: State the consideration to be offered.

Item 6 - Payment for deposited securities: State the particulars of the method and date of payment of the consideration.

Item 7 - Right to withdraw deposited securities: Describe the right to withdraw securities deposited pursuant to the bid.

Item 8 - Source of funds: State the source of any funds to be used for payment.

Item 9 - Participation: Where the issuer bid is for less than all of the outstanding securities of that class, state that if a greater number or principal amount of the securities are tendered than the issuer is bound or willing to take up and pay for, the issuer will take up proportionately, disregarding fractions, according to the number or principal amount of the securities tendered.

Item 10 - Trading in securities to be acquired: Furnish, a summary showing:

- (a) the name of each securities exchange or other principal market on which the securities sought are traded;
- (b) for the twelve months preceding the date of the issuer bid, the volume of trading and price range of the class of the securities sought, or in the case of debt securities the prices quoted, on each principal market; and
- (c) the date that the issuer bid to which the circular relates was announced to the public and the market price of the securities of the issuer immediately before such announcement.

Indicate any change in a principal market or markets that is planned following the bid.

Item 11 - Ownership of securities of issuer: State the number, designation and the percentage of outstanding securities of any class of securities of the issuer owned or over which control or direction is exercised by each director and senior officer of the issuer, as well as each associate of a director or senior officer of the issuer; any person holding more than ten per cent of any class of voting or equity securities of the issuer; and any person acting jointly or in concert with the issuer, or, in each case where none are so owned, directed or controlled, a statement to that effect.

Item 12 - Commitments to acquire securities of issuer: Disclose all arrangements, agreements, commitments or understandings made by the issuer and, where known after reasonable enquiry, by the persons referred to in Item 11, to acquire voting or equity securities of the issuer, and the terms and conditions of any such arrangements, agreements, commitments or understandings.

Item 13 - Acceptance of bid: Where known after reasonable inquiry, state the name of every person named in Item 11 who proposes to tender or accept the issuer bid and the number of securities in respect of which the person proposes to accept the bid.



- Item 14 - Benefits from bid: State the direct or indirect benefits to any of the persons named in Item 11 of accepting or refusing to accept the issuer bid.
- Item 15 - Material changes in the affairs of issuer: Disclose the particulars of any plans or proposals for material changes in the affairs of the issuer, including, for example, any contract or agreement under negotiation, any proposal to liquidate the issuer, to sell, lease or exchange all or a substantial part of its assets, to amalgamate it with any other business organization or to make any material changes in its business, corporate structure (debt or equity), management or personnel.
- Item 16 - Other benefits to insiders, affiliates and associates: If any material changes or subsequent transactions are contemplated, as described in Item 15, state if known, any specific benefit, direct or indirect, as a result of such changes or transactions to any of the persons named in Item 12.
- Item 17 - Arrangements between issuer and security holder: Provide the details of any contract, arrangement or understanding, formal or informal, between the issuer and:
- (a) any security holder of the issuer with respect to the issuer bid; and
  - (b) any person with respect to any securities of the issuer in relation to the issuer bid.
- Item 18 - Previous purchases and sales: State the number and designation of any securities of the issuer purchased or sold by the issuer, excluding securities purchased or sold pursuant to the exercise of employee stock options, warrants and conversion rights during the twelve months preceding the date of the issuer bid, including the purchase or sale price, the date and purpose of each transaction.
- Item 19 - Financial statements:
- (1) If the most recently available interim financial statements have not been delivered to security holders of the issuer, include the interim financial statements. If interim financial statements are not included, include a statement that the most recent interim financial statements will be sent to anyone requesting them.
  - (2) Where interim financial statements are included, include a report of the chief financial officer of the offeree issuer, stating whether in the opinion of the chief financial officer, the financial statements present fairly the financial position of the offeree issuer and the results of its operations for the period under review.
- Item 20 - Valuation: Where a valuation is provided pursuant to a legal requirement or otherwise:
- (a) include a summary of the valuation, disclosing the basis of computation, scope of review, relevant factors and their

values, and the key assumptions on which the valuation is based; and

- (b) advise where copies of the valuation are available for inspection and state that a copy of the valuation will be sent to any registered security holder.

Item 21 - Securities of issuer to be exchanged for others: Where an issuer bid provides that the consideration for the securities of the issuer is to be, in whole or in part, different securities of an issuer, include the information required by the Commission to be contained in a prospectus in respect of the issuer.

Item 22 - Approval of bid: State whether the issuer bid circular has been approved by the issuer's board of directors, disclosing the name of any director of the issuer who has informed the board of directors in writing of his or her opposition to the issuer bid and whether the delivery of the issuer bid circular to the security holders of the issuer has been authorized by the issuer's board of directors. Where the issuer bid is part of a transaction or to be followed by a transaction required to be approved by minority security holders, state the nature of the approval required.

Item 23 - View of issuer's board:

- (a) Whether the directors of the offeree recommend that the shareholders shall accept or reject the offer, with reasons for the recommendation.
- (b) The summary of the report of the independent adviser as to whether the offer is fair and reasonable and the reasons thereof.
- (c) Whether the directors and any person dealing directly on their behalf intends to accept the offer.

Item 24 - Previous distribution: If the securities of the class subject to the issuer bid were distributed during the five years preceding the bid, state the distribution price per share and the aggregate proceeds received by the issuer or selling security holder.

Item 25 - Dividend policy: State the frequency and amount of dividends with respect to securities of the issuer during the two years preceding the date of the issuer bid, any restrictions on the issuer's ability to pay dividends and any plan or intention to declare a dividend or to alter the dividend policy of the issuer.

Item 26 - Expenses of bid: Provide a statement of the expenses incurred or to be incurred in connection with the issuer bid.

Item 27 - Other material facts: Describe any other matter not disclosed in the foregoing that has not previously been generally disclosed and is known to the issuer but which would reasonably be expected to affect the decision of the security holders of the issuer to accept or reject the offer.

Item 28- Certificate: Include a certificate in the following form signed by the chief executive officer and the chief financial officer of the issuer, and on behalf of the board of directors, by any two directors of the issuer other than the foregoing, all duly authorized to sign. Where the issuer has fewer than four directors and senior officers, the certificates shall be signed by all of them.

"I/We, the undersigned, hereby affirm that to the best of my/our information, knowledge and belief, the contents herein and any attachments provided herewith are true, correct and not misleading."

Item 29 - Date of issuer bid circular:

### FORM 3

#### DIRECTORS CIRCULAR

Provide the following information and documentation:

Item 1 - Name of offeror:

Item 2 - Name of offeree issuer:

Item 3 - Names of directors of the offeree issuer:

Item 4 - Ownership of securities of offeree issuer:

State the number, designation and the percentage of outstanding securities of any class of securities of the offeree issuer owned or over which control or direction is exercised by each director or senior officer of the offeree issuer, and, where known after reasonable enquiry by –

- (a) each associate of a director or senior officer of the offeree issuer;
- (b) any person holding more than ten per cent of any class of voting or equity securities of the offeree issuer; and
- (c) any person acting jointly or in concert with the offeree issuer, or, in each case where none are so owned, directed or controlled, a statement to that effect.

Item 5 - Acceptance of take-over bid: Where known after reasonable enquiry, state the name of every person in Item 4 who has accepted or intends to accept the offer and the number of securities in respect of which such person has accepted or intends to accept the offer.

Item 6 - Ownership of securities of offeror: Where a take-over bid is made by or on behalf of an offeror that is an issuer, state the number, designation and percentage of outstanding securities of any class of securities of the offeror owned or over which control or direction is exercised by the offeree issuer, by each director and senior officer of the offeree issuer, and, where known after reasonable enquiry, by —

(a) each associate of a director or senior officer of the offeree issuer;

(b) any person holding more than ten per cent of any class of voting or equity securities of the offeree issuer; and

(c) any person acting jointly or in concert with the offeree issuer,

or, in each case where none are so owned, directed or controlled, a statement to that effect.

Item 7 - Relationship between the offeror and the directors and senior officers of the offeree Issuer: State the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeror and any of the directors or senior officers of the offeree issuer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to their remaining in or retiring from office if the take-over bid is successful. State also, whether any directors or senior officers of the offeree issuer are also directors or senior officers of the offeror or any subsidiary of the offeror and identify such persons.

Item 8 - Agreement between offeree issuer and officers and directors: State the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeree issuer and any of the directors or senior officers of the offeree issuer pursuant to which a payment or other benefit is to be made or given by way of compensation for loss of office or as to their remaining in or retiring from office if the take-over bid is successful.

Item 9 - Interests of directors and senior officers of the offeree issuer in material contracts of the offeror: State whether any director or senior officer of the offeree issuer and their associates, or any other person who owns more than ten per cent of any class of voting or equity securities of the offeree issuer for the time being outstanding, has any interest in any material contract to which the offeror is a party, and if so, state particulars of the nature and extent of such interest.

Item 10 - Trading by directors and officers:

(1) State the number of securities of the offeree issuer traded, the purchase or sale price and the date of each transaction during the 6-month period preceding the date of the directors' circular by the offeree issuer

and each director and senior officer of the offeree issuer, and, where known after reasonable enquiry, by:

- (a) each associate of a director or senior officer of the offeree issuer;
- (b) any person holding more than ten per cent of a class of voting or equity securities of the offeree issuer; and
- (c) any person acting jointly or in concert with the offeree issuer.

(2) Disclose the number and price of securities of the offeree issuer of the class of securities subject to the bid or convertible into securities of that class that have been issued to the directors and senior officers of the issuer during the two-year period preceding the date of the circular.

Item 11 - Additional information: If any information required to be disclosed by the take-over bid circular prepared by the offeror has been presented incorrectly or is misleading, supply any additional information within the knowledge of the offeree issuer which would make the information in the circular correct or not misleading.

Item 12 - Material changes in the affairs of offeree issuer: State the particulars of any information known to any of the directors or senior officers of the offeree issuer that indicate any material change in the affairs of the offeree issuer since the date of the last published interim or annual financial statement of the offeree issuer.

Item 13 - Valuation: For each prior valuation completed within the twenty-four months preceding the date of the bid, and for each formal valuation made after the date of the bid, that the offeree issuer has access to, or is in the possession or control of the offeree issuer, to the extent such valuations are not disclosed in a take-over bid circular:

- (a) include a summary of the valuation, disclosing the basis of computation, scope of review, relevant factors and their values, and the key assumptions on which the valuation is based; and
- (b) advise where copies of the valuation are available for inspection and state that a copy of the valuation will be sent to any registered security holder upon payment of a nominal charge sufficient to cover copying and postage.

Item 14 - Other information: State the particulars of any other information not disclosed in the foregoing but known to the directors which would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.

Item 15 - Recommending acceptance or rejection of bid: Include either a recommendation to accept or reject the take-over bid and the reasons for such recommendation, including the extent to which the board of directors

relied on any formal valuation or prior valuation, or a statement that the board of directors is unable to make or is not making a recommendation and if no recommendation is made, the reasons for not making a recommendation. Where a board of directors of an offeree issuer is considering recommending acceptance or rejection of a take-over bid at the time of sending a directors' circular, state that fact and, if desired, advise the security holders of the offeree issuer not to tender their securities until a further communication is received from the directors.

Item 16 - Response of offeree issuer:

- (1) Describe any transaction, board resolution, agreement in principle or signed contract of the offeree issuer in response to the bid.
- (2) Disclose whether there are any negotiations underway in response to the bid which relate to or would result in —
  - (a) an extraordinary transaction such as a merger or reorganization involving the offeree issuer or a subsidiary;
  - (b) the purchase, sale or transfer of a material amount of assets by the offeree issuer or a subsidiary;
  - (c) an issuer bid for or other acquisition of securities by or of the offeree issuer; or
  - (d) any material change in the present capitalization or dividend policy of the offeree issuer,

if there is an agreement in principle, give full particulars.

Item 17 - Approval of directors' circular: State that the contents of the directors' circular have been approved by the directors of the offeree issuer and that the delivery of the directors' circular has been authorized by the directors of the offeree issuer.

Item 18 - Financial statements: Where unaudited financial statements of the offeree issuer are included in a directors' circular, include a report of the chief financial officer of the offeree issuer, stating whether in the opinion of the chief financial officer the financial statements present fairly the financial position of the offeree issuer and the results of its operations for the period under review.

Item 19 - Certificate: Include a certificate in the following form signed by two directors of the issuer, duly authorized to sign on behalf of the board:

"I/We, the undersigned, hereby affirm that to the best of my/our information, knowledge and belief, the contents herein and any attachments provided herewith are true, correct and not misleading."

Item 20 - Date of directors' circular:

## FORM 4

### DIRECTORS' & OFFICER'S CIRCULAR

Provide the following information and documentation:

Item 1 - Name of Offeror:

Item 2 - Name of Offeree Issuer:

Item 3 - Name of Director or Officer of Offeree Issuer: State the name of each director or officer delivering the circular.

Item 4 - Ownership of Securities of Offeree Issuer: State the number, designation and percentage of outstanding securities of any securities of the offeree issuer owned or over which control or direction is exercised by the director or officer and, where known after reasonable enquiry, by the associates of the director or officer. In each case where none is so owned, a statement to that effect is required.

Item 5 - Acceptance of Bid by Director or Officer: State whether the director or officer of the offeree issuer and whether any associate of such director or officer whose acceptance is known to the director or officer, after reasonable inquiry, has accepted or intends to accept the offer in respect of any securities of the offeree issuer sought to be acquired, as well as the corresponding number of securities.

Item 6 - Securities of Offeror Owned by Director or Officer: Where a take-over bid is made by or on behalf of an issuer, state the number, designation and percentage of outstanding securities of any securities of the offeror owned or over which control or direction is exercised by the director or officer, or, where known after reasonable inquiry, by the associates of such director or officer.

Item 7 - Arrangements between Offeror and Director or Officer: State the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeror and the director or officer, including particulars of any payment or other benefit proposed to be made or given by way of compensation for loss of office or as to the director's or officer's remaining in or retiring from office if the take-over bid is successful. State whether the director or officer is also a director or senior officer of the offeror or any subsidiary of the offeror.

Item 8 - Arrangements between Offeree Issuer and Director or Officer: State the particulars of any arrangement, agreement, commitment or understanding made or proposed to be made between the offeree issuer and the director or officer pursuant to which a payment or other benefit is to be made or

given by way of compensation for loss of office or as to his remaining in or retiring from office if the take-over bid is successful.

- Item 9 - Interests of Director or Officer in Material Contracts of Offeror: State whether or not the director or officer or the associates of the director or officer have any interest in any material contract to which the offeror is a party, and if so, state particulars of the nature and extent of such interest.
- Item 10 - Valuation: For each prior valuation completed within the twenty-four months preceding the date of the bid, and for each formal valuation made after the date of the bid, that the director or officer has access to, or is in the possession or control of the director or officer, to the extent such valuations are not disclosed in a take-over bid circular or directors' circular:
- (a) include a summary of the valuation, disclosing the basis of computation, scope of review, relevant factors and their values, and the key assumptions on which the valuation is based; and
  - (b) advise where copies of the valuation are available for inspection and state that a copy of the valuation will be sent to a registered security holder upon request.
- Item 11 - Additional Information: If any information required to be disclosed by the take-over bid circular prepared by the offeror has been presented incorrectly or is misleading, supply any additional information within the knowledge of the director or officer which would make the information in the circular correct or not misleading.
- Item 12 - Material Changes in the Affairs of Offeree Issuer: State the particulars of any information known to the director or officer that indicates any material change in the affairs of the offeree issuer since the date of the last published interim or annual financial statement of the offeree issuer and not previously generally publicly disclosed or in the opinion of the director or officer not adequately disclosed in the take-over bid circular or directors' circular.
- Item 13 - Other Information: State the particulars of any other information not disclosed in the foregoing but known to the director or officer which would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the offer.
- Item 14 - Recommendation: State the recommendation of the director or officer and the reasons for the recommendation including the extent to which the director or officer relied on any formal valuation or prior valuation.
- Item 15 - Certificate: Include a certificate in the following form signed by or on behalf of each director or officer sending the circular:



"I/We, the undersigned, hereby affirm that to the best of my/our information, knowledge and belief, the contents herein and any attachments provided herewith are true, correct and not misleading."

Item 16 - Date of Director's or Officer's Circular:

## **SECOND SCHEDULE**

### **(Rule 38)**

#### **FEES**

Filing of a take-over bid or issuer bid circular	\$2,500.00
Filing of offer document with the Commission	25% of the value of the offer to a maximum of \$15,000.00
Waiver of the mandatory offer	\$1,500.00
Filing of a notice of change or variation	\$250.00
Extension of the offer period	\$800.00
Application for making a subsequent offer	\$800.00
Application for exemptions	\$1,500.00
Establishment of Advisory Panel	\$3,500.00

## **THIRD SCHEDULE**

### **(Rule 66)**

#### **OATH OF CONFIDENTIALITY**

IN THE SUPREME COURT OF THE COMMONWEALTH OF THE  
BAHAMAS

I, ....., do swear/solemnly affirm/declare that I will well and truly serve the Commonwealth of The Bahamas as a member of the Take-over Advisory Panel established under the Securities Industry (Take-over) Rules 2019 and I will do right to all people according to law, without fear or favour, affection or ill-will. (So help me God).

Taken before me, .....

Notary Public.....

(Date).....

**Made this 12<sup>th</sup> day of April, 2019.**

**ROBERT V. LOTMORE  
Chairman  
Securities Commission**