

**TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION**



**GUIDELINES ON SHARE REPURCHASES PURSUANT TO THE  
COMPANIES ACT 1995 AND THE SECURITIES INDUSTRY  
(TAKE-OVER) BY-LAWS, 2005**

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# **GUIDELINES ON SHARE REPURCHASES PURSUANT TO THE COMPANIES ACT 1995 AND THE SECURITIES INDUSTRY (TAKE-OVER) BY-LAWS, 2005**

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## **BACKGROUND AND PURPOSE**

In Trinidad and Tobago, share repurchases are provided for under sections 42 and 44 of the Companies Act, Chap. 81:01.

There are several possible reasons why a company may wish to repurchase its own shares. These include:

1. Some companies may reach a point in their development where, through lack of new investment opportunities, contraction of markets, or a decision to scale down operations, it is desirable to reduce the equity base.
2. Company controllers may seek to conduct the repurchase in such a way as to influence the share price. This can be for several reasons including:
  - where a large shareholder in a company intends to sell his shares, the company may wish to ensure that these shares are not dumped on the market, with a resulting decline in its shares;
  - repurchases may be used to give price support for undervalued shares where the management believes that the current market price of the shares is below their long term value.
3. A company may undertake a repurchase to supply the stock market with new information about a company's operating performance and its future projects. Here the announcement may act as a market signal that the company considers its shares undervalued. In addition to this it may signal that a company expects large cash flows in the future and that it can afford some funds to shareholders.
4. A repurchase of shares can be utilized as a defensive technique in the face of a threatened, pending or actual takeover bid or as a preventative means of reducing a company's vulnerability to unwelcome offers.

### **Effect on creditors**

An important function of company law is the protection of creditors. Because of the limited liability of companies, company law has to secure the raising and maintenance of equity capital as a sort of guarantee for creditors. According to the capital maintenance concept, the issued share capital of a company is seen as a guarantee fund intended for the payment of the claims of the creditors of a company, with the result that the issued share capital of a company may not be returned to the shareholders except where the Companies Act or the common law authorizes it. The shrinkage of the company's capital base threatens particularly the unsecured creditors whose *de facto* security is the liquidation value of the company's net marketable assets.

## **Effects on shareholders**

A repurchase can in principle be done through:

- an invitation to tender; or
- a transaction on the stock exchange.

Where the repurchase is made as an invitation to tender, the shareholders voluntarily decide whether or not to sell and divide themselves accordingly.

Another possible instance may be where a company acquires shares at a discount to their true value, thereby increasing the equity value of the remaining shares at the expense of the vendor shareholders.

It is also possible that the majority shareholders, in expectation of losses of the company and a decline in the share price, sell their shares to the company at what is in fact an overvaluation. When it becomes obvious that the liquidation will result in less than par repayments for the other shareholders, the repurchase brings about something which has to be called a 'preferential liquidation'.

In fact when the shares are not repurchased at a fair value such a transaction always shifts wealth from one group of shareholders at the expense of another. The fact that a shareholder is not obliged to sell his shares does not alter this fact.

The potential for internal inequities can be minimized through mainly three requirements:

1. Disclosure of details of any share repurchase activity before and after the event;
2. Prior permission by shareholders; and
3. The requirement to repurchase shares through a stock exchange.

## GUIDELINES

### 1. Definitions:

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

**“board lot”** for the purposes of these Guidelines shall consist of:

- (i) 100 units of shares priced at more than \$40.00
- (ii) 200 units of shares priced at \$10.01 to \$40.00
- (iii) 500 units of shares priced at \$10.00 or less.

**“insider”** has the meaning assigned to it in section 3(1) of the Securities Industry Act, 1995.

**“public float”** means the number, known to the issuer after reasonable enquiry, of shares of the class which are issued and outstanding, less the number of shares beneficially owned, or over which control or direction is exercised by:

- (i) the listed issuer;
- (ii) every senior officer or director of the listed issuer;
- (iii) every substantial shareholder of the listed issuer, as that term is defined in section 181 of the Companies Act, Chap. 81:01 (“the Companies Act”);
- (iv) every associate of the persons listed in paragraphs (i) to (iii) above, as defined in section 4 of the Companies Act;
- (v) an affiliate of the listed issuer, as defined in by-law 2 of the Securities Industry (Take-Over) By-Laws, 2005 (“the Take-Over By-Laws”).

### 2. Normal course issuer bid: One category of issuer bid within the Take-Over By-Laws is the “normal course issuer bid” which means an issuer bid by a listed issuer to repurchase its listed shares where the purchases:

- (a) do not, when aggregated with all other purchases by the listed issuer during the same trading day, aggregate more than the greater of:

- (i) 25% of the average daily trading volume of the listed shares of that class;  
and
  - (ii) 1,000 shares.
- (b) do not exceed the percentages specified below of such class of shares issued and outstanding on the date of acceptance of the notice of normal course issuer bid by the Exchange, excluding any shares held by or on behalf of the listed issuer on the date of acceptance of the notice of normal course issuer bid by the Exchange:
- (i) if the public float is not less than thirty percent (30%) and not more than 40%, the company may repurchase a maximum of three percent (3%) of its shares over a period of three (3) consecutive years;
  - (ii) if the public float is more than 40% and not more than fifty percent (50%), the company may repurchase a maximum of four percent (4%) of its shares over a period of two (2) consecutive years;
  - (iii) if the public float is more than 50%, the company may repurchase a maximum of five percent (5%) over a period of two (2) consecutive years.

where such purchases are made through the facilities of the Exchange, but excluding purchases made under an issuer bid circular made in accordance with the Take-Over By-Laws.

3. **Guidelines to apply to all normal course issuer bids:** The provisions of these Guidelines shall apply to all normal course issuer bids.
4. **Minimum public float:** A normal course issuer bid may only be commenced by a listed issuer that has a minimum public float of thirty percent (30%), in accordance with the definition of “public float” in these Guidelines.
5. **Requirements of Companies Act:** A listed issuer that proposes to make a normal course issuer bid must satisfy the following requirements of the Companies Act:
  - (a) sections 43 to 45, as applicable, and
  - (b) section 50.
6. **Contents of Notice:** The company repurchasing its own shares is required to file a notice with the Exchange. The filing of a notice is a declaration by the issuer that it has a present intention to acquire shares. The notice should set out:
  - (a) **The name of the issuer.**
  - (b) **The class and maximum number of shares** that the listed issuer’s board of directors has determined may be acquired, rather than simply reciting the maximum number or percentage of shares that may be repurchased pursuant to these Guidelines.

- (c) **The percentage of shares outstanding or the public float**, as the case may be, for which the bid is being made.
- (d) **Duration of the issuer bid.** The dates on which the normal course issuer bid will commence and terminate. The normal course issuer bid may not extend for a period of more than one year from the date on which the purchases may commence.
- (e) **The method of acquisition.** State that the purchases will be effected through the facilities of the Exchange. Also state that the purchase and payment for the shares will be made by the issuer in accordance with the requirements of the Exchange and that the price the issuer will pay for any shares acquired by it will be the market price of the shares at the time of the acquisition.
- (f) **Consideration offered.** Indicate any restrictions on the price the offeror is prepared to pay and any other restrictions related to the issuer bid, such as the specific funds available, method of purchasing, etc.
- (g) **Reasons** for the normal course issuer bid.
- (h) **Valuation.** Include a summary of any appraisal or valuation of the issuer known to the directors or officers of the issuer after reasonable enquiry regarding the issuer, its material assets or shares prepared within the two years preceding the date of the notice, together with a statement of a reasonable time and place at which such appraisal and valuation, or a copy thereof, may be inspected.
- (i) **Previous purchases.** Where the issuer has purchased shares which are the subject of the normal course issuer bid within the last 12 months, state the method of acquisition, the number of shares purchased and the average price paid.
- (j) **Persons acting jointly or in concert** with the issuer.
- (k) **Acceptance by insiders, affiliates and associates.** State the name of every director or senior officer of the company who intends to sell shares of the issuer during the course of the normal course issuer bid and where their intention is known after reasonable enquiry, the name of every:
  - (i) associate of a director or senior officer of the company;
  - (ii) person acting jointly or in concert with the company; or
  - (iii) person holding 10% or more of any class of shares of the company, who intends to sell shares.
- (l) **Benefits** from the normal course issuer bid.

(m) **Material changes in the affairs of the issuer company.** Disclose any previously undisclosed material changes or plans or proposals for material changes in the affairs of the issuer.

(n) **Certificate.** The notice shall be certified complete and accurate and in compliance with the rules and policies of the Exchange by a director or senior officer of the issuer duly authorized by the issuer's board of directors. The statement shall include a statement to the effect that the notice contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it is made.

5. **Notice to be filed with Exchange:** A draft of the notice containing the information specified in paragraph 4 above must be filed with the Exchange. When the notice is in a form acceptable to the Exchange, the issuer shall file the notice in final form, duly executed by a senior officer or director of the issuer, for acceptance by the Exchange. The final form must be filed at least two clear trading days prior to the commencement of any purchases under the bid.

Copies of the draft notice and the final notice must also be filed with the Commission at the same time as these are files with the Exchange.

6. **Period of bid:** A normal course issuer bid shall not extend for a period of more than one year from the date on which purchases begin.

7. **Press release:** The issuer will issue a press release indicating its intention to make a normal course issuer bid, subject to regulatory approval, prior to acceptance of the notice by the Exchange. The press release should summarize the material aspects of the contents of the notice, including the number of shares sought, the reason for the bid and details of any previous purchases in the preceding 12 month period. A draft press release should be provided to the Exchange together with the draft notice and the issuer shall issue a press release as soon as the notice is accepted by the Exchange. A copy of the final press release shall be filed with the Exchange.

8. **Disclosure to shareholders:** The issuer shall include a summary of the material information contained in the notice in the next annual report, annual information circular, quarterly report or other document mailed to shareholders. The document should indicate that shareholders may obtain a copy of the notice, without charge, by contacting the issuer.

9. **Commencement of purchases:** A normal course issuer bid may commence on the date that is two trading days after the latest of:

- (i) The date of acceptance by the Exchange of the issuer's notice in final form;  
or
- (ii) The date of issuance of the press release.

10. **Amendment:** During the course of a normal course issuer bid an issuer may determine that it wishes to amend its notice by increasing the number of shares sought while not **exceeding** the maximum percentages referred to in the definition of normal course issuer bid. The issuer may do so by issuing a press release and advising the Exchange in writing.
11. **Corporate actions that increase a company's share capital:** An issuer may not take actions that result in an increase in its share capital except where such shares are issued pursuant to a pre-existing obligation under a pension, stock purchase, stock option, dividend reinvestment or other plan.

**The following rules apply to listed issuers and brokers acting on their own behalf:**

1. **Price limitations:** it is inappropriate for an issuer making a normal course issuer bid to abnormally influence the market price of its shares. Therefore purchases made by issuers pursuant to a normal course issuer bid shall be made at a price which is not higher than the last independent trade of a board lot of the class of shares which is the subject of the normal course issuer bid. In particular the following are not "independent trades":
  - (i) Trades directly or indirectly for the account of (or an account under the direction of) an insider of the issuer, or an associate or affiliate of either the insider or an insider of the issuer;
  - (ii) Trades for the account of (or an account under the direction of) the broker making purchases for the bid.
  - (iii) Trades solicited by the broker making purchases for the bid.
2. **Prearranged Trades:** It is important to investor confidence that all holders of identical shares be treated in a fair and even-handed manner by the issuer. Therefore, an intentional cross or pre-arranged trade is not permitted where the seller is an insider, an associate of an insider, or an associate or affiliate of the issuer, unless:
  - (i) There is a binding commitment to complete the intentional cross or pre-arranged trade prior to the notice being issued to the Exchange in accordance with guideline 5;
  - (ii) The existence of the binding commitment to conduct the intentional cross or pre-arranged trade is disclosed in the notice and the press release required by guidelines 5 and 7, respectively; and
  - (iii) The existence of the binding commitment to conduct the intentional cross or pre-arranged trade is included in the disclosure to shareholders required by guideline 8.
3. **Private agreements:** It is in the interest of shareholders that transactions pursuant to an issuer bid should be made in the open market. The Exchange will normally not accept a



notice which indicates that purchases will be made other than by means of open market transactions.

4. **Purchases during a take-over bid:** An issuer shall not make any purchases of its shares pursuant to a normal course issuer bid during a takeover bid for those shares. This restriction applies from the period from the first public announcement of the normal course issuer bid until the termination of the period during which the shares may be deposited under such bid, including any extension thereof. This restriction does not apply to purchases, made solely as a trustee pursuant to a pre-existing obligation under a pension, stock purchase, stock option, dividend reinvestment or other plan.
5. **Undisclosed material information:** A listed issuer shall not make any purchases of its shares pursuant to a normal course issuer bid while the listed issuer possesses any material information which has not been disclosed to shareholders.
6. **One broker to be appointed:** The issuer shall appoint only one broker to make its purchases. The issuer shall inform the Exchange in writing of the name of the responsible broker. The issuer is required to receive the written consent of the Exchange where it intends to change its broker.
7. **The issuer must continue to meet the criteria for listing:** The Exchange will not accept a notice if the listed issuer would not meet the criteria for continued listing on the Exchange, assuming all of the purchases contemplated by the notice were made.
8. **Suspension for non-compliance:** Failure to comply with any requirement herein may result in the suspension of the bid.

October 1, 2006

*Trinidad and Tobago Securities and Exchange Commission*