

**PROPOSED TAKE-OVER BY-LAWS PURSUANT TO SECTION
131(2) OF THE SECURITIES INDUSTRY ACT, 1995**

CONTENTS

By-laws **Page No.**

PART 1

PRELIMINARY

1.	Citation	1
2.	Scheduled Forms	1
3.	Definitions	1

PART II

EXEMPTIONS

4.	Exempt take-over bids	8
5.	Exempt issuer bids	10
6.	Exchange requirements shall be met	12

PART III

RESTRICTIONS ON ACQUISITIONS OR SALES

7.	Restrictions on acquisitions during take-over bid	12
8.	Restrictions on acquisitions during issuer bid	13
9.	Restrictions on pre-bid and post-bid acquisitions	13
10.	Sales during bid prohibited	14
11.	Exemptions to by-laws 7(2) to 10	15

PART IV

REQUIREMENTS FOR BIDS

12.	General provisions	15
13.	Financing of bid	18
14.	Consideration in bids	18

PART V

BID CIRCULARS

15.	Offeror's circular	18
16.	Directors' circular	20
17.	Delivery to offeree issuer	21
18.	Consent of expert to use of name	22
19.	Valuation requirements	22

PART VI

SPECIAL REPORTING AND LIMITATIONS ON ACQUISITIONS

20.	Reports of acquisitions	25
21.	Acquisitions during bid by other offeror	26
22.	No duplication of report or press release	26

PART VII

MISREPRESENTATION AND OFFENCES

23.	Liability for misrepresentation	27
24.	Offences	31

PART VIII

SPECIAL APPLICATIONS

25.	Applications to the Commission	31
26.	Applications to the Court	32

PART IX

MINORITY SECURITY HOLDERS' RIGHTS AND DEFENSIVE TACTICS

27.	Minority security holder's right to be bought out by offeror	33
28.	Defensive Tactics	35

PART X

PROCEDURAL REQUIREMENTS

29.	Notice of Intention	35
30.	Information required in press release	35
31.	Content of notice of change or notice of variation	36
32.	Definition for by-law 33 and 34	38
33.	Press release concerning acquisitions by offeror	38
34.	Press release by persons other than the offeror under a formal bid	39
35.	Disclosure	39
36.	Alternate signing authority	40
37.	Timely filing of circular or notice	40
38.	Fees	40

SCHEDULE 1

(by-law 2)

FORMS

1. Notice of Intention to Make an Issuer Bid (by-law 29)
2. Take-Over Bid Circular (by-law 15(8))
3. Issuer Bid Circular (by-law 15(8))
4. Director's Circular (by-law 16(8))
5. Director's or Officer's Circular (by-law 16(8))

SCHEDULE 2

(by-law 38)

FEEES

REPUBLIC OF TRINIDAD AND TOBAGO

THE SECURITIES INDUSTRY ACT, 1995

BY-LAWS

**MADE BY THE MINISTER UNDER SECTION 131(2)
OF
THE SECURITIES INDUSTRY ACT, 1995**

TAKE-OVER BY-LAWS, 2003

PART I - PRELIMINARY

1. These By-Laws may be cited as the Take-Over By-Laws, 2003 **Citation**
2. The forms herein referred to are those contained in Schedule 1 and such forms shall be used in all cases to which they are applicable, and may be modified as directed by the Commission in such circumstances as it may consider necessary. **Scheduled Forms**
3. (1) In these By-Laws, **Definitions**
 - “*the Act*” means the Securities Industry Act, 1995;
 - “*affiliate*” means an affiliated body corporate or affiliated person within the meaning of paragraph (2);
 - “*business day*” means a day other than a Saturday, a Sunday or a public holiday;
 - “*class of securities*” includes a series of a class of securities;
 - “*Commission*” means the Trinidad and Tobago Securities and Exchange Commission established under the Act;

“*director*”, where used in relation to a person, includes a person acting in a capacity similar

to that of a director of a 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;

“formal bid” means,

- (a) a take-over bid or an issuer bid to which by-law 12 applies, or
- (b) a take-over bid that is exempted from by-laws 12 to 17 or an issuer bid that is exempted from by-laws 12, 13, 14, 15 and 17,
 - (i) by reason of an exemption under by-law 5(5), if the offeror is required to deliver to every security holder whose last address as shown on the books of the offeree issuer is in Trinidad and Tobago a disclosure document of the type contemplated by by-law 23(10), or
 - (ii) by reason of an exemption under by-law 4(1)(c) or 5(8), if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;

“interested person” means, for the purposes of by-laws 25 and 26,

- (a) an offeree issuer,
- (b) a 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 by-law 25 or 26, as the case may be;

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to any person who is in Trinidad and Tobago or to any security holder of the issuer whose last address as shown on the books of the issuer is in Trinidad and Tobago and includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from any such

person, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

“*offer to acquire*” includes,

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (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 to the person that made the offer to sell;

“*offeree issuer*” means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;

“*offeror*” means a person who makes a take-over bid, an issuer bid or an offer to acquire and, for the purposes of by-law 20, includes a person who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire;

“*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;

“*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;

“*take-over bid*” means an offer to acquire outstanding voting or equity securities of a class made to any person who is in Trinidad and Tobago or to any security holder of the offeree issuer whose last address as shown on the books of the offeree issuer is in Trinidad and Tobago, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate twenty-five per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.

Affiliates

- (2) For the purposes of these By-Laws,

- (a) (i) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (ii) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.
- (b) (i) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (ii) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.
- (c) a person that is not a body corporate or an individual is considered to be an affiliated person of another person, including a body corporate, if it is controlled by that other, provided that a person is controlled by another person if,
 - (i) (A) in the case of a partnership, other than a limited partnership, the second-mentioned person owns or holds more than fifty percent of the interest in the partnership;
 - (B) in the case of a limited partnership, the general partner is the second-mentioned person; or
 - (ii) in the case of the first-mentioned person other than a body corporate, an individual, a partnership, or a limited partnership, securities of the first-mentioned person carrying more than fifty percent of the interests in such person, are held or owned, by or for the benefit of the second-mentioned person.

**Computation of
time and expiry of
bid**

- (3) For the purposes of these By-Laws,
 - (a) a period of days is to be computed as
 - (i) beginning on the day next following the event that began the period, and
 - (ii) ending at midnight on the last day of the period, except that if

the last day of the period does not fall on a business day, the period ends at midnight on the next business day, and

- (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.

**Convertible
security**

- (4) For the purposes of these By-Laws,
 - (a) a security is deemed to be convertible into a security of another class
 - (i) if, whether or not on conditions, it is or may be convertible into or exchangeable for a security of the other class, whether of the same or another issuer, or
 - (ii) if it carries the right or obligation to acquire a security of the other class, whether of the same or another issuer, and
 - (b) a security that is convertible into a security of another class is deemed to be convertible into a security or securities of each class into which the second mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

- (5) (a) For the purposes of these By-Laws, in determining the beneficial ownership of securities of an offeror or of any person acting jointly or in concert with the offeror, at any given date, the offeror or the person 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 such date into the security, 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.

**Deemed
beneficial
ownership**

- (b) 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.
 - (c) If an offeror or any person acting jointly or in concert with the offeror is deemed by subparagraph (a) 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.
- (6) (a) For the purposes of these By-Laws, it is a question of fact as to whether a person is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing, the following are presumed to be acting jointly or in concert with an offeror: **Acting jointly or in concert**
- (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 acting jointly or in concert with the offeror, 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 acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer;
 - (iii) every associate or affiliate of the offeror.
- (b) Despite subparagraph (a), a registered market actor acting solely in an agency capacity for the offeror in connection with a take-over bid or an issuer bid and not executing principal transactions for the registered market actor's own account in the class of securities subject to the offer to acquire or performing services beyond the customary market actor's functions is not to be presumed solely by reason of such agency relationship to be acting jointly or in concert with the offeror in connection with the bid.

Application to
direct and

- (7) For the purposes of these By-Laws, a reference to an offer to acquire or to the

indirect offers

acquisition or ownership of securities or to control or direction over securities is to be construed to include a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

Market price

- (8)
- (a) For the purposes of these By-Laws, the market price of securities for which there is a published market is to be determined in accordance with this paragraph (8).
 - (b) The market price of a class of securities for which there is a published market, 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.
 - (c) 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 for each of the business days on which there were highest and lowest prices during the twenty business days immediately preceding that date.
 - (d) If there is more than one published market for a security, the market price for the purposes of subparagraphs (b) and (c) shall be determined as follows:
 - (i) if only one of the published markets is in Trinidad and Tobago, the market price shall be determined solely by reference to that market;
 - (ii) if there is more than one published market in Trinidad and Tobago, the market price shall be determined solely by reference to the published market in Trinidad and Tobago on which the greatest volume of trading in the particular class of securities occurred during the twenty business days immediately preceding the date as of which the market price is being determined;
 - (iii) if there is no published market in Trinidad and Tobago, 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

business days immediately preceding the date as of which the market price is being determined.

- (e) If there has been trading of securities in a published market for fewer than ten of the twenty business 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 business 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;
 - (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.
- (f) Despite subparagraphs (b), (c), (d) or (e), for the purpose of by-law 4(1)(a), if an offeror acquires securities on a published market, the market price for those securities is the price of the last board lot of securities of that class purchased, before the acquisition by the offeror, by a person that was not acting jointly or in concert with the offeror.

PART II - EXEMPTIONS

**Exempt take-over
bids** 4.

- (1) Subject to these By-Laws, a take-over bid is exempt from by-laws 12 to 17 if any of the following apply:
 - (a) the bid meets all the following conditions:
 - (i) the bid is for not more than five percent of the outstanding securities of a class of securities of the issuer;
 - (ii) the aggregate number of securities acquired by the offeror and any person acting jointly or in concert with the offeror within any period of twelve months in reliance on the exemption provided by this subparagraph (a) does not, when aggregated

with acquisitions otherwise made by the offeror and any person acting jointly or in concert with the offeror within the same twelve month period, constitute in excess of five percent of the outstanding securities of that class of the issuer at the beginning of the twelve month period;

(iii) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition, determined in accordance with these By-Laws, plus reasonable brokerage fees or commissions actually paid;

(b) the bid meets all the following conditions:

(i) the offeree issuer is not a reporting issuer;

(ii) there is not a published market in respect of the securities that are the subject of the bid;

(iii) the number of holders of securities of that class is fewer than thirty-five, exclusive of holders who

(A) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or

(B) were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer;

(c) the bid meets all of the following conditions:

(i) the number of holders, whose last address as shown on the books of the offeree issuer is in Trinidad and Tobago, of securities of the class subject to the bid is fewer than thirty-five;

(ii) the securities held by such holders constitute, in aggregate, less than five percent of the outstanding securities of that class;

(iii) the bid is made in compliance with the laws of a jurisdiction

that is recognized for the purposes of this subparagraph (c) by the Commission;

(iv) all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in Trinidad and Tobago and is filed with the Commission;

(d) the bid is otherwise exempted by these By-Laws or any amendment to them.

5. Subject to these By-Laws, an issuer bid is exempt from by-laws 12, 13, 14, 15 and 17 if any of the following apply: **Exempt issuer bids**

(1) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching to them that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or if the securities are acquired to meet sinking fund or purchase fund requirements;

(2) the purchase, redemption or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated, organized or continued;

(3) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to redeem or repurchase the securities and the securities are acquired pursuant to the exercise of the right;

(4) 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,

(a) 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 By-Laws, and

(b) 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 this paragraph (4) is not greater than five percent of the securities of that class issued and outstanding at the beginning of the period;

- (5) the bid is made through the facilities of a securities exchange recognized by the Commission for the purpose of this paragraph (5);
- (6) following the publication of a notice of intention in the required form and in the manner prescribed by by-law 29, the issuer purchases securities in the normal course in the open market, including through the facilities of a securities exchange, if 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 this paragraph (6) is not greater than five percent of the securities of that class issued and outstanding at the beginning of the period;
- (7) the bid meets all the following conditions:
 - (a) the 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;
 - (c) the number of holders of securities of the issuer is fewer than thirty-five, exclusive of holders who
 - (i) are in the employment of the issuer or an affiliate of the issuer, or
 - (ii) were formerly in the employment of the issuer or an affiliate of the issuer and who while in that employment were, and have continued after the employment to be, security holders of the issuer;
- (8) the bid meets all of the following conditions:
 - (a) the number of holders, whose last address as shown on the books of the issuer is in Trinidad and Tobago, of securities of the class subject to the bid is fewer than thirty-five;
 - (b) the securities held by such holders constitute, in aggregate, less than five percent of the outstanding securities of that class;
 - (c) the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this paragraph by the Commission;
 - (d) all material relating to the bid that is sent by the offeror to holders of

securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the issuer is in Trinidad and Tobago and is filed with the Commission;

- (9) the bid is otherwise exempted by these By-Laws or any amendment to them.
6. An issuer bid that is made in reliance on an exemption in by-law 5 through the facilities of a securities exchange shall be made in accordance with the by-laws, rules and other regulatory instruments or policies of the securities exchange. **Exchange requirements shall be met**

PART III — RESTRICTIONS ON ACQUISITIONS OR SALES

7. (1) In this by-law, “offeror” means **Restrictions on acquisitions during take-over bid**
- (a) an offeror making a formal bid other than a bid referred to in by-law 4(1)(c) or 5(8),
 - (b) a person acting jointly or in concert with an offeror referred to in paragraph (a), or
 - (c) a security holder of an offeror referred to in subparagraph (a) who, as regards the offeror, is a person or one of a prescribed group of persons referred to in subparagraph (c) of the definition of “distribution” in section 3(1) of the Act or an associate or affiliate of such security holder .
- (2) An offeror shall not offer to acquire or make, or enter into, an 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 on and from the day of the announcement of the offeror’s intention to make the bid until its expiry
- (3) Despite paragraph (2), an offeror making a take-over bid may purchase, through the facilities of a securities exchange recognized by the Commission, securities of the class that are subject to the bid and securities convertible into securities of that class beginning on the third business day following the date of the bid until the expiry of the bid if
- (a) the intention to make such purchases is stated in the take-over bid circular,

- (b) the aggregate number of securities acquired under this paragraph (3) does not constitute in excess of five percent of the outstanding securities of that class as at the date of the bid, and
 - (c) the offeror issues and files with the Commission a press release immediately after the close of business of the securities exchange on each day on which securities have been purchased under this paragraph (3) disclosing the information prescribed by by-law 30.
- (4) Paragraph (2) does not apply to an offeror in respect of an agreement between a security holder and the offeror to the effect that the security holder, in accordance with the terms and conditions of a take-over bid that is a formal bid made by the offeror, will deposit the security holder's securities pursuant to the bid.

Restrictions on acquisitions during issuer bid

8. An offeror making an issuer bid shall not offer to 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 the bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry, but this by-law does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during such period in reliance on an exemption under by-law 5(1), (2) or (3).

Restrictions on pre-bid and post-bid acquisitions

9. (1) If a take-over bid that is a formal bid is made by an offeror and, within the period of ninety days immediately preceding the bid, the offeror acquired 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) consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any of such prior transactions, or
 - (ii) at least the cash equivalent of such consideration, and
 - (b) the offeror shall offer to acquire under the bid that percentage of securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in such a prior transaction was of the total number of securities

of that class beneficially owned by such seller at the time of the prior transaction.

- (2) Paragraph (1) does not apply to an offeror under a take-over bid if the transaction that occurred within ninety days immediately preceding the bid 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) During the period beginning with the expiry of a take-over bid that is a formal bid and ending at the end of the twentieth business day after that, whether or not any securities are taken up under the bid, an offeror shall not acquire beneficial ownership of securities of the class that was subject to the bid except by way of a transaction that is generally available to holders of that class of securities on terms identical to those under the bid.
 - (4) Paragraphs (1) and (3) do not apply to trades effected in the normal course on a published market, so long as
 - (a) any broker acting for the purchaser or seller does not perform services beyond the customary broker's function and does not receive more than reasonable fees or commissions,
 - (b) the purchaser or any person acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, and
 - (c) the seller or any person acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.
10. (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 expiry.
 - (2) Despite 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 it of securities pursuant to a dividend plan, dividend reinvestment plan, purchase plan or another similar plan.

Sales during bid prohibited
Exemptions to by-laws 7(2) to 10

11. By-laws 7(2) to 10 inclusive do not apply to an associate of a person referred to in by-law 7(1)(c) that is not acting jointly or in concert with such person in respect of the formal bid referred to in by-law 7(1)(a).

PART IV — REQUIREMENTS FOR BIDS

General provisions

12. Subject to these By-Laws, the following requirements apply to every take-over bid and issuer bid:
 - (1) The bid shall be made to all holders of securities of the class that is subject to the bid who are in Trinidad and Tobago, and delivered by the offeror to all holders, whose last address as shown on the books of the offeree issuer is in Trinidad and Tobago, of securities of that class and of securities that, before the expiry of the bid, are convertible into securities of that class;
 - (1.1) Solely for the purpose of complying with by-law 12(1), an offeror has the right to require an offeree issuer to deliver to it in writing a complete list of all of the holders of securities of the class subject to the bid as shown on the books of the offeree issuer and the offeree issuer shall deliver such list to the offeror no later than ten days following the written request of the offeror;
 - (2) The offeror shall allow securities to be deposited pursuant to the bid for at least thirty-five days from the date of the bid;
 - (3) Securities deposited pursuant to the bid shall not be taken up by the offeror until the expiration of thirty-five days from the date of the bid;
 - (4) 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 by-law 15, and
 - (c) if the securities have not been taken up and paid for by the offeror, after the expiry of forty-five days from the date of the bid.
- (5) The right of withdrawal conferred by paragraph (4)(b) does not apply
 - (a) if the securities have been taken up by the offeror at the date of the notice,
 - (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 by-law 15(5), or
 - (c) in the circumstances described in by-law 15(6);
- (6) Notice of withdrawal of any securities under paragraph (4) shall be made by or on behalf of the depositing security holder by a method that provides the depository designated under the bid with a written or printed copy and, to be effective, the notice shall be actually received by the depository and, if notice is given in accordance with this paragraph (6), the offeror shall return the securities to the depositing security holder;
- (7) If the bid is made for less than all of the class of securities subject to the bid and if a greater number of securities is deposited pursuant to the bid than the offeror is bound or willing to acquire under the bid, the securities shall be taken up and paid for by the offeror, as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositing security holder;
- (8) If an offeror purchases securities as permitted by by-law 7(3), the securities so purchased shall be counted in the determination of whether a condition as to 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;
- (9) Subject to paragraphs (10) and (11), the offeror shall take up and pay for securities deposited under the bid, if all the terms and conditions of the bid have been complied with or waived, not later than ten days after the expiry of the bid.

- (10) Any securities that are taken up by the offeror under the bid shall be paid for by the offeror as soon as possible, and in any event not more than three business days, after the taking up of the securities;
- (11) Any securities deposited pursuant to the bid subsequent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror within ten days of the deposit of the securities;
- (12) A bid may not be extended by the offeror, if all the terms and conditions of the bid have been complied with except those waived by the offeror, unless the offeror first takes up and pays for all securities deposited under the bid and not withdrawn;
- (12.1) Despite by-law 12(12) if the offeror waives any terms or conditions of a bid and extends the bid in circumstances where the rights of withdrawal conferred by by-law 12(4)(b) are applicable, the bid shall be extended without the offeror first taking up the securities which are subject to such rights of withdrawal;
- (13) If all the terms and conditions of the bid have been complied with or waived, the offeror shall immediately issue a notice by press release stating
 - (i) that all of the terms and conditions of the bid have been complied with or waived;
 - (ii) the approximate number of securities deposited and the approximate number that have been, or that will be, taken up; and
 - (iii) the amount and nature of the consideration paid, or to be paid, for the securities taken up;
- (14) If an offeror withdraws a bid, or if a bid expires or lapses due to failure of a condition, the offeror shall immediately issue a notice by press release stating
 - (i) that the bid has been withdrawn, or has expired or lapsed due to failure of a condition;
 - (ii) the number of securities deposited pursuant to the bid but not taken up;
 - (iii) the arrangements made by the offeror for the return of the securities deposited;

- (iv) where the bid is withdrawn, the reasons of the offeror for withdrawing the bid; and
 - (v) where the bid expires or lapses due to a failure of a condition, which condition of the bid has failed.
- (15) A notice issued by press release under by-law 12(13) or 12(14) shall be concurrently filed with the Commission.

Financing of bid 13. If a take-over bid or issuer bid provides that the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements before the bid to ensure that the required funds are available to make full payment for all securities that the offeror has offered to acquire.

Consideration in bids 14. (1) Subject to these By-Laws, if a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.

(2) If an offeror makes or intends to make a take-over bid or issuer bid, the offeror or any person acting jointly or in concert with 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) If a variation in the terms of the take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, 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.

PART V — BID CIRCULARS

Offeror's circular 15. (1) An offeror shall deliver, with or as part of a take-over bid or issuer bid, a take-over bid circular or issuer bid circular, as the case may be.

(2) If, before the expiry of a take-over bid or issuer bid or after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities, a change has occurred in the information contained in a take-over bid circular or issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the

securities of the offeree issuer to accept or reject the bid, a notice of the change shall be delivered 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.

- (3) Paragraph (2) 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.
- (4) If there is a variation in the terms of a take-over bid 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 bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation.
- (5) Subject to paragraph (6), if there is a variation in the terms of a take-over bid 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.
- (6) Paragraph (5) does not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.
- (7)
 - (a) A variation in the terms of a take-over bid or issuer bid, other than a variation that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, shall not be made after the expiry of the period, including any extension of the period, during which securities may be deposited pursuant to the bid.
 - (b) If there is a variation in the terms of a take-over bid or issuer bid that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, paragraph (4) does not apply in respect of that bid if
 - (i) the waiver occurs, and the offeror has issued a press release announcing the waiver, during the five days immediately following the expiry of the period, including any extension of the period, during which securities may be deposited pursuant

to the bid, and

- (ii) the consideration offered for the securities consists solely of cash.

(8) A take-over bid circular and an issuer bid circular shall contain the information prescribed by Forms 2 and 3 respectively.

(9) A notice of change and a notice of variation shall contain the information required by by-law 31.

**Directors'
circular**

16. (1) If a take-over bid has been made, a directors' circular shall be prepared and delivered by the board of directors of an offeree issuer to every person to whom a take-over bid shall be delivered under by-law 12(1), not later than twenty-one days after the date of the bid.

(2) The board of directors shall include in a directors' circular either

(a) a recommendation to accept or to reject a take-over bid and the reasons for their recommendation, or

(b) a statement that they are unable to make or are not making a recommendation and, if no recommendation is made, the reasons for not making a recommendation.

(3) 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 prepared in accordance with paragraph (8).

(4) If a board of directors is considering recommending acceptance or rejection of a take-over bid, it

(a) shall, at the time of sending or delivering a directors' circular, advise the security holders of this fact, and

(b) may advise them not to tender their securities until further communication is received from the directors.

(5) If paragraph (4) applies, the board of directors shall deliver the recommendation or the decision not to make a recommendation at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid.

- (6) If, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid,
- (a) a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer 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, or
 - (b) a change has occurred in the information contained in an individual director's or officer's circular or any notice of change to it that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, that individual director or officer shall immediately deliver a notice of change in relation to it to the board of directors.
- (7) If an individual director or officer submits a circular under paragraph (3) or a notice of change under subparagraph (6)(b) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to the persons referred to in paragraph (1).
- (8) A directors' circular and a director's or officer's circular shall contain the information prescribed in Forms 4 and 5 respectively.
17. (1) A take-over bid and any notice of change or variation shall be filed with the Commission and shall be delivered to the offeree issuer at the registered office of the offeree issuer and an issuer bid and any notice of change or variation shall be filed with the Commission on the day such bid or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable after that. Delivery to offeree issuer
- (2) Every directors' circular and every individual director's or officer's circular or any notice of change in relation to it that is delivered to security holders of an offeree issuer shall be filed with the Commission and shall be delivered to the offeror at the registered office of the offeror on the day the directors' circular or individual director's or officer's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable after that.

- (3) A take-over bid or issuer bid, a take-over bid circular, an issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation in any such bid or circular shall be
 - (a) mailed by prepaid post to the intended recipient, or
 - (b) delivered to the intended recipient by personal delivery, or
 - (c) published in one or more daily newspapers published in Trinidad and Tobago over a period of not less than five consecutive days, or
 - (d) delivered in such other manner as the Commission may approve.
- (4) Any bid, circular or notice mailed or delivered in accordance with subparagraphs (3)(a), (b) or (d) is deemed to have been delivered and is deemed conclusively for the purposes of by-laws 12, 15 and 16 and this by-law to have been dated as of the date on which it was mailed or delivered in accordance with subparagraphs (3)(a), (b) or (d) to all or substantially all of the persons entitled to receive it.
- (5) Any bid, circular or notice published in accordance with subparagraph (3)(c) is deemed to have been delivered and is deemed conclusively for the purposes of by-laws 12, 15 and 16 and this by-law to have been dated as of the fifth day after publishing in accordance with subparagraph (3)(c) to all or substantially all of the persons entitled to receive it.

**Consent of expert
to use of name**

18. If a report, formal valuation, appraisal or statement of an expert is included in or accompanies

- (1) a take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, or
- (2) a notice of change or notice of variation in respect of a take-over bid or issuer bid,

the written consent of the expert to the use of the report, formal valuation, appraisal or statement shall be filed with the Commission concurrently with the circular or notice.

**Valuation
requirements**

19. (1) In these by-laws:

"formal valuation" means a valuation of participating securities that

- (a) is prepared by a qualified and independent valuer,
- (b) is based on appropriate techniques and on relevant assumptions including going concern and liquidation assumptions if both types of assumptions are relevant or including whichever of those two types of assumptions are relevant if only one of them is relevant, and
- (c) contains the valuer's opinion as to a value or range of values for the participating securities, without any downward adjustments in value on account of any of the participating securities not being part of a controlling interest;

“going private transaction” means an amalgamation, arrangement, consolidation or other transaction

- (a) proposed to be carried out by an issuer of a participating security, and
- (b) of which one consequence is that a holder's interest in that participating security may be terminated without the holder's consent and without the substitution for that interest of an interest of equivalent value in another participating security
 - (i) of that issuer,
 - (ii) of a successor to the business of that issuer, or
 - (iii) of another issuer that controls that issuer,

but does not include the acquisition of participating securities pursuant to a statutory right of acquisition;

“insider bid” means a take-over bid made

- (a) by an insider of the offeree issuer whose securities are the subject of the bid, or
- (b) by any associate or affiliate of an insider of that offeree issuer,

“participating security” means an equity security and includes a security that is convertible within the meaning of by-law 3(4) into an equity security.

“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.

- (2) Every take-over bid circular and issuer bid circular to which this by-law applies shall contain, except where the offeror establishes to the Commission's satisfaction that the offeror lacks access to information enabling the offeror to comply with this paragraph, and subject to any waiver or variation consented to in writing by the Commission,
 - (a) a summary of a formal valuation of the offeree issuer;
 - (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 it was made.
- (3) This by-law applies only to,
 - (a) a take-over bid circular that is required by these By-Laws in respect of an insider bid;
 - (b) a take-over bid circular that is required by these By-Laws where it is anticipated by the offeror that a going private transaction will follow the take-over bid; or
 - (c) an issuer bid circular that is required by these By-Laws.
- (4) Subject to paragraph (5), a formal valuation referred to in subparagraph (2)(a) shall be as of a date that is not more than one hundred and twenty days before the date of the take-over bid or issuer bid and shall contain appropriate adjustments for material intervening events.
- (5) A formal valuation referred to in subparagraph (2)(a) may be as of a date that is more than one hundred and twenty days before the date of the take-over bid or issuer bid if it is accompanied by a letter addressed to the directors of the issuer confirming that the 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, if there has been such an event, describing it and stating the resultant change in the value or range of values in the

valuation.

- (6) Where the Commission is of the opinion that disclosure of information required by paragraph (2) to be furnished to the holders of securities would cause a detriment to the offeree issuer or the security holders of the offeree issuer that would outweigh the benefit of the information to the prospective recipients, the Commission may permit the omission of the information.
- (7) A formal valuation referred to in subparagraph 2(a) and a letter of confirmation, if any, referred to in paragraph (5), shall be filed with the Commission concurrently with the filing of the circular in which reference to the valuation is made except where the Commission otherwise permits.

PART VI — SPECIAL REPORTING AND LIMITATIONS ON ACQUISITIONS

20. (1) Every offeror that, except pursuant to a formal bid, acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such offeror's securities of that class, would constitute ten percent or more of the outstanding securities of that class, **Reports of acquisitions**
- (a) shall immediately issue and file with the Commission a press release containing the information prescribed by by-law 33, and
 - (b) shall, within two business days, file with the Commission a report containing the same information as is contained in the press release issued under subparagraph (a).
- (2) If an offeror is required to file a report under paragraph (1) or a further report under this paragraph and the offeror or any person acting jointly or in concert with the offeror acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, an additional two percent or more of the outstanding securities of the class or there is a change in any other material fact in such a report, the offeror,
- (a) shall immediately issue and file a press release containing the information prescribed by by-law 33, and
 - (b) shall, within two business days, file with the Commission a report containing the same information as is contained in the press release issued under subparagraph (a).
- (3) During the period beginning on the occurrence of an event in respect of

which a report or further report is required to be filed with the Commission under this by-law and ending on the expiry of one business day after the date that the report or further report is filed, the offeror or any person acting jointly or in concert with the offeror shall not acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

- (4) Paragraph (3) does not apply to an offeror that is the beneficial owner of, or has the power to exercise control or direction over, securities that, together with such offeror's securities of that class, constitute twenty-five percent or more of the outstanding securities of that class.

Acquisitions during bid by other offeror

- 21. (1) If, after a formal bid has been made for voting or equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the person making the bid, acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to such offeror's securities of that class, constitute five percent or more of the outstanding securities of that class, the offeror shall
 - (a) not later than the opening of trading on the next business day, issue a press release containing the information prescribed by by-law 34, and
 - (b) immediately file with the Commission a copy of the press release.
- (2) If an offeror that has filed with the Commission or is required to file with the Commission a press release under paragraph (1) or a further press release under this paragraph or any person acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the securities of that class acquired after the filing of the press release by the offeror and any person acting jointly or in concert with the offeror, aggregates an additional two percent or more of the class of outstanding securities, the offeror shall
 - (a) not later than the opening of trading on the next business day, issue a further press release containing the information prescribed by by-law 34, and
 - (b) immediately file with the Commission a copy of the press release.

No duplication of report or press

- 22. (1) If the facts required to be reported or in respect of which a press release is

release

required to be filed with the Commission under by-laws 20 and 21 are identical, a report or press release is required only under the provision requiring the earlier report or press release, as the case may be.

- (2) If
 - (a) an offeror and one or more persons acting jointly or in concert with the offeror are required to issue and file with the Commission a press release or report under by-law 20 or a press release or further press release under by-law 21, and
 - (b) a press release, report or further press release issued and filed with the Commission by the offeror discloses the information required by by-law 33 or 34 as to a person acting jointly or in concert with the offeror,

that person need not issue and file with the Commission a separate press release, report or further press release, as the case may be.

PART VII - MISREPRESENTATION AND OFFENCES

23. (1) If a take-over bid circular sent to the security holders of an offeree issuer as required by these By-Laws 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 By-Laws 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) If a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by these By-Laws 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

**Liability for
misrepresenta-
-tion**

misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.

- (3) Paragraph (1) applies with necessary modifications where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation.
- (4) No person is liable under paragraph (1), (2) or (3) if the person proves that the security holder had knowledge of the misrepresentation.
- (5) No person, other than the offeror, is liable under paragraph (1), (2) or (3) if he, she or it proves,
 - (a) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his, her or its knowledge or consent and that, on becoming aware of it, he, she or it forthwith gave reasonable general notice that it was so sent;
 - (b) that, after the sending of the take-over bid circular, issuer bid circular, director's circular or director's or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he, she or it withdrew the consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;
 - (c) that, 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, she or it had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;
 - (d) that, with respect to any part of the circular purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert, but that contains a misrepresentation attributable to failure to represent fairly his, her or its report, 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, her or its report, opinion or statement as an expert, or
 - (ii) on becoming aware that such part of the circular did not fairly represent his, her or its report, opinion or statement as an expert, he, she or it forthwith advised the Commission and gave reasonable general notice that such use had been made and that he, she or it would not be responsible for that part of the circular; or
- (e) that, 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, she or it had reasonable grounds to believe and did believe that the statement was true.
- (6) No person, other than the offeror, is liable under paragraph (1), (2) or (3) with respect to any part of the circular purporting to be made on his, her or its own authority as an expert or purporting to be a copy of an extract from his, her or its own report, opinion or statement as an expert unless he, she or it
 - (a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
 - (b) believed there had been a misrepresentation.
- (7) No person, other than the offeror, is liable under paragraph (1), (2) or (3) with respect to any part of the circular not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he, she or it,
 - (a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
 - (b) believed there had been a misrepresentation.
- (8) All or any one or more of the persons specified in paragraph (1), (2) or (3) are jointly and severally liable, and every person who becomes liable to make

any payment under this by-law 23 may recover a contribution from any person who, if sued separately, would have been liable to make the same payment provided that the Court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

- (9) In an action for damages pursuant to paragraph (1), (2) or (3) based on a misrepresentation affecting a security offered by the offeror in exchange for securities of the offeree issuer, the defendant is not liable for all or any portion of such damages that the defendant proves do not represent the depreciation in value of the security as a result of misrepresentation.
- (10) If the offeror in an issuer bid exempted from the provisions of these By-Laws by by-law 5(5), is required, by the by-laws, regulations or policies of the securities exchange through the facilities of which the issuer bid is made, to file with it or to deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this by-law 23, to be an issuer bid circular delivered to the security holders as required by these By-Laws.
- (11) The right of action for rescission or damages conferred by this by-law 23 is in addition to and without derogation from any other right the security holders of the offeree issuer may have at law.
- (12) In determining what constitutes reasonable investigation or reasonable grounds for belief for the purpose of this by-law 23, the standard of reasonableness shall be that required of a prudent person in the circumstances of the particular case.
- (13) An action shall not be commenced to enforce a right created by this by-law 23 after the expiry of,
 - (a) in the case of an action for recission, one hundred and eighty days after the date of the transaction that gave rise to the cause of action;
or
 - (b) in the case of an action for damages,
 - (i) one hundred and eighty days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
 - (ii) three years after the date of the transaction that gave rise to the cause of action,

whichever is the earlier.

- (14) A take-over bid circular, issuer bid circular, directors' circular, director's or officer's circular, or any notice of change or notice of variation that is required under these By-Laws shall contain a statement of the rights provided by this by-law 23 relating to that circular or notice.
- (15) If a take-over bid or issuer bid is made in Trinidad and Tobago inclusion in a circular or notice of the following statement shall be deemed to be in compliance with paragraph (14):

“Securities legislation in Trinidad and Tobago provides security holders of the offeree issuer with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such rights shall be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the Trinidad and Tobago securities legislation for particulars of those rights or consult with a lawyer.”

- 24. (1) A person who, without reasonable cause, fails to comply with these By-Laws is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both. **Offences**
- (2) If a person who is a body corporate commits an offence under paragraph (1), any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both, whether or not the body corporate has been prosecuted or convicted.
- (3) No proceedings under this by-law 24 shall be commenced more than six years after the date of the events that give rise to the proceedings.

PART VIII — SPECIAL APPLICATIONS

- 25. (1) If the Commission considers that a person has not complied or is not complying with these By-Laws, the Commission may make an order, **Applications to the Commission**
 - (a) restraining the distribution of any record used or issued in connection

with a take-over bid or issuer bid,

- (b) requiring an amendment to or variation of any record used or issued in connection with a take-over bid or issuer bid and requiring the distribution of any amended, varied or corrected record, and
- (c) directing any person to comply with these By-Laws or restraining any person from contravening these By-Laws and directing the directors and senior officers of the person to cause the person to comply with or to cease contravening these By-Laws.

(2) If the Commission considers that to do so would not be prejudicial to the public interest, the Commission may

- (a) decide for the purposes of by-law 14(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 despite by-law 14(2),
- (b) vary any time period set out in these By-Laws, and
- (c) order that a person or class of persons is exempt from one or more of the requirements of these By-Laws.

(3) An order under paragraph (1) or (2) may be made on application by an interested person or on the Commission's own motion.

**Applications to
the Court**

26. (1) An interested person may apply to the Court for an order under this by-law 26.
- (2) On an application under paragraph (1), if the Court is satisfied that a person has not complied with these By-Laws, the Court may make such interim or final order as the Court thinks fit including, without limiting the generality of the foregoing,
- (a) an order compensating any interested person who is a party to the application for damages suffered as a result of a contravention of

these By-Laws,

- (b) an order rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security,
- (c) an order requiring any person to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid,
- (d) an order prohibiting any person from exercising any or all of the voting rights attaching to any securities, and
- (e) an order requiring the trial of an issue.

PART IX - MINORITY SECURITY HOLDERS' RIGHTS AND DEFENSIVE TACTICS

27. (1) Where ninety percent 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, then the holder of any securities of that class not counted for the purposes of calculating such percentage shall be entitled in accordance with this section to require the offeror to acquire the holder's securities of that class. **Minority security holder's right to be bought out by offeror**
- (2) Every offeror, within thirty days after it becomes aware that security holders are entitled to require it to acquire their securities under paragraph (1), shall send a written notice to each such security holder that the security holder may within sixty days after the date of such notice require the offeror to acquire his, her or its securities.
- (3) The notice sent by the offeror under paragraph (2) shall,
- (a) set out a price 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, her or its securities fixed by the Court.

- (4) Where a security holder receives a notice under paragraph (2) and wishes the offeror to acquire his, her or its 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 of acceptance to the offeror and by forthwith sending his, her or its security certificates to the offeror; or
 - (b) notify the offeror that the security holder wishes to have the fair value of his, her or its securities fixed by the Court.
- (5) Where a security holder wishes to have the fair value of his, her or its securities fixed by the Court, the offeror shall 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, her or its 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.
- (8) Upon an application to the Court under paragraph (5), (6) or (7),
 - (a) all security holders who have notified the offeror under subparagraph (4)(b) may be joined as parties as the Court thinks fit and, if so joined, are bound by the decision of the Court; and
 - (b) the offeror shall notify each security holder entitled to notice under paragraph (2) of the date, place and purpose of the application and of the security holder's right to appear and be heard in person or by attorney-at-law.
- (9) Upon an application to the Court under paragraph (5), (6) or (7), the Court may determine whether any security holders should properly be sent or have been sent notice and whether such security holders should be joined as parties.
- (10) The Court may appoint one or more appraisers to assist the Court in fixing a fair value for the securities.
- (11) The final order of the Court shall be made against the offeror in favour of each entitled security holder.

28. (1) Where an offeree issuer has received a take-over bid, or has reason to believe that a bona fide bid is imminent, no action, which may result in a bid being frustrated, or in security holders of the offeree issuer being denied an opportunity to decide on the merits of the bid, shall be taken by the directors of the offeree issuer in relation to the affairs of the offeree issuer, unless: **Defensive Tactics**
- (a) the offeree issuer has approved the action by resolution in general meeting; or
 - (b) 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) in other circumstances, for reasons unrelated to the bid, and the prior written consent of the Commission has been obtained to the action taken.
- (2) The notice of meeting containing the proposed resolution for the purposes of paragraph (1)(a) shall contain, or be accompanied by, full particulars of the proposed action, the reasons for it, and the significance and effect of the resolution under these By-Laws.

PART X - PROCEDURAL REQUIREMENTS

29. A notice of intention referred to in by-law 5(6) shall contain the information prescribed in Form 1 and shall be filed with the Commission and a press release in respect of the issuer bid that is the subject of the notice shall be issued at least five days before the commencement of the issuer bid. **Notice of Intention**
30. A press release required under by-law 7 (3)(c) shall disclose, in respect of the class of securities subject to the take-over bid and of each class of securities convertible within the meaning of by-law 3(3) into securities of that class purchased through the facilities of a securities exchange, **Information required in press release**
- (1) the name of the purchaser,

- (2) if the purchaser is a person referred to in by-law 7(1)(b) or (c), the relationship of the purchaser and the offeror,
- (3) the number of securities purchased by the purchaser on the day for which the press release is required,
- (4) the highest price paid for the securities by the purchaser on the day for which the press release is required,
- (5) the aggregate number of securities purchased through the facilities of the securities exchange by the purchaser during the currency of the bid,
- (6) 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, and
- (7) the total number of securities owned by the purchaser as of the close of business of the securities exchange on the day for which the press release is required.

**Content of notice
of change or
notice of variation**

31. (1) A notice of change required under by-law 15(2) shall contain
- (a) a description of the change in the information contained in
 - (i) the take-over bid circular,
 - (ii) the issuer bid circular,
 - (iii) any notice of change previously delivered under by-law 15 (2), or
 - (iv) any notice of variation previously delivered under by-law 15 (4),
 - (b) the date of the change,
 - (c) the date up to which securities may be deposited,
 - (d) the date by which securities deposited shall 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 bid circular or issuer bid circular, amended to refer to the initial circular and to all subsequent notices of change or notices of variation.

(2) A notice of variation required under by-law 15(4) shall contain

- (a) a description of the variation in the terms of the take-over bid or issuer bid,
- (b) the date of the variation,
- (c) the date up to which securities may be deposited,
- (d) the date by which securities deposited shall 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 bid circular or issuer bid circular, amended to refer to the initial circular and to all subsequent notices of change or notices of variation.

(3) A notice of change required under by-law 16(6) (a) or (b) shall contain

- (a) a description of the change in the information contained in
 - (i) the directors' circular,
 - (ii) any notice of change previously delivered under by-law 16(6) (a),
 - (iii) the director's or officer's circular, or
 - (iv) any notice of change previously delivered under by-law 16(6) (b), 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 notices of variation.

Definition for by-law 33 and 34

32. In by-law 33 and 34 “*securities of the offeree issuer*” means
- (1) voting or equity securities issued by the offeree issuer that are of the class of securities acquired in an acquisition described in by-law 20(1) or (2), and
 - (2) securities of each class of voting or equity securities that are convertible within the meaning of by-law 3(4) into securities of the class described in paragraph (1).

Press release concerning acquisitions by offeror

33. (1) A press release required under by-law 20 shall be authorized by a senior officer of the offeror and shall set out
- (a) the name of the offeror,
 - (b) the number of securities of the offeree issuer that were acquired in the acquisition that gave rise to the requirement under by-law 20(1)(a) or (2)(a) to issue the press release,
 - (c) 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 described in subparagraph (b),
 - (d) the name of the market in which the acquisition described in subparagraph (b) took place,
 - (e) the purpose of the offeror and all persons acting jointly or in concert with the offeror in making the acquisition described in subparagraph (b), including any intention of the offeror and all persons acting jointly or in concert with the offeror to increase the beneficial ownership of, or control or direction over, any of the securities of the offeree issuer,
 - (f) if applicable, a description of any change in a material fact set out in a previous press release issued under by-law 20(1)(a) or (2)(a), and
 - (g) the names of all persons acting jointly or in concert with the offeror in connection with the securities of the offeree issuer.

- (2) A report required under by-law 20(1)(b) or (2)(b) shall be signed by the offeror and shall include the information required by paragraph (1)
34. (1) In this by-law “*offeror*” means the offeror referred to in by-law 21 that makes the acquisition that gives rise to the requirement under by-law 21 to issue a press release or further press release. **Press release by persons other than the offeror under a formal bid**
- (2) A press release or further press release required under by-law 21 shall be authorized by a senior officer of the offeror and shall set out
- (a) the name of the offeror,
 - (b) the number of securities of the offeree issuer that were acquired in the acquisition that gave rise to the requirement under by-law 21 to issue the press release or further press release,
 - (c) 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 described in subparagraph (b),
 - (d) the name of the market in which the acquisition described in subparagraph (b) took place, and
 - (e) the purpose of the offeror and all persons acting jointly or in concert with the offeror in making the acquisition described in subparagraph (b), including any intention of the offeror and all persons acting jointly or in concert with the offeror to increase the beneficial ownership of, or control or direction over, any of the securities of the offeree issuer.
35. (1) The information contained in a circular or notice required these By-Laws shall be clearly presented and the statements made in the circular or notice shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. **Disclosure**
- (2) The order of items in the appropriate form need not be followed.
- (3) If practical and appropriate, information in a circular or notice shall be presented in tabular form.
- (4) All amounts required in a circular or notice shall be stated in both words and

figures.

- (5) Information required by more than one applicable item in the appropriate form need not be repeated.
- (6) No statement need be made in response to any item in the appropriate form that is inapplicable and negative answers to any item may be omitted except if expressly required by the applicable form.

- | | | |
|--|-----|---|
| Alternate signing authority | 36. | If the Commission is satisfied on evidence or submissions made to the Commission that a chief executive officer or chief financial officer is, for adequate cause, not available to sign a certificate or notice required under these By-Laws, the Commission may permit the certificate or notice to be signed by another responsible officer or director. |
| Timely filing of circular or notice | 37. | A circular or notice required under these By-Laws shall be filed with the Commission on the same date that it is first sent to security holders of the offeree issuer. |
| Fees | 38. | The fees payable under these By-Laws are those set out in Schedule 2. |

SCHEDULE 1

(by-law 2)

Form 1

(by-law 29)

Notice of Intention to Make an Issuer Bid

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, where known, 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 Securities:

State the particulars of the method and time of payment of the consideration.

Item 7 — Reasons for Bid:

State the purpose and business reasons for the issuer bid.

Item 8 — Acceptance of Bid:

State the names of every director and every senior officer of the issuer who intends to accept the issuer bid and, where their intention to accept the bid is known after reasonable enquiry, state the names of,

- (a) every associate of every director and of every senior officer of the issuer;

- (b) every person holding ten per cent or more of any class of voting or equity securities of the issuer; and
- (c) every person acting jointly or in concert with the issuer, who intends to accept the bid.

Item 9 — Benefits from Bid:

State the direct or indirect benefits to any of the persons named in Item 8 of accepting or refusing to accept the issuer bid.

Item 10 — 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 11 — Signature:

This notice shall be signed by a director or senior officer of the issuer duly authorized to sign.

Item 12 — Date of Notice.

Take-Over Bid Circular

Item 1 — Name of Offeror**Item 2 — Name of Offeree Issuer****Item 3 — Securities Subject to Bid:**

State 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 4 — Ownership of Securities of Offeree Issuer:

State 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, and, where known after reasonable enquiry, 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,

or, in each case where no securities are so owned, directed or controlled, a statement to that effect.

Item 5 — Trading in Securities of Offeree Issuer:

State, where known after reasonable inquiry has been made, the number and designation of any securities of the offeree issuer traded by the persons referred to in Item 4 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, so state.

Item 6 — Commitments to Acquire Securities of Offeree Issuer:

Disclose all arrangements, agreements, commitments or understandings made by the offeror, and, where known after reasonable enquiry, by the persons referred to in Item 4 to acquire voting or equity securities of the offeree issuer, and the terms and conditions of any such arrangements, agreements, commitments or understandings.

Item 7 — Terms and Conditions of the Bid:

State the terms of the take-over bid. State, where the obligation of the offeror to take up and pay for securities under the take-over bid is conditional, the particulars of each condition.

Item 8 — Payment for Deposited Securities:

State 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 9 — Right to Withdraw Deposited Securities:

Describe the withdrawal rights of the security holders of the offeree issuer under the bid. State that notice of withdrawal of securities deposited shall be given in a manner that provides the depository designated under the bid with a written or printed copy and shall be actually received by the depository.

Item 10 — Arrangements to Pay for Deposited Securities:

State the source of any funds to be used for payment and, if such funds are to be borrowed, the terms of the loan, the circumstances under which it shall be repaid and the proposed method of repayment.

Item 11 — 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, where reasonably ascertainable, a summary showing in reasonable detail 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 12 — Arrangements Between the Offeror and the Directors and Officers of 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.

Item 13 — 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 14 — 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 holder of securities of the offeree issuer sought to be acquired upon payment of a charge sufficient to cover copying and postage.

Item 15 — Securities of an Offeror or Other Issuer to be Exchanged for Securities of Offeree Issuer:

- (1) Where a take-over bid provides that the consideration for the securities of the offeree issuer is to be, in whole or in part, securities of an offeror or other issuer, 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) Where required by the Commission to be contained in a prospectus, 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) 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 16 — 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 17 — Market Purchases of Securities:

State whether or not the offeror intends to purchase in the market securities that are the subject of the take-over bid.

Item 18 — 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 19 — Other Material Facts:

Describe any,

- (a) material facts concerning the securities of the offeree issuer; and
- (b) any other matter not disclosed in the foregoing 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 20 — Judicial Developments:

Where the take-over bid is an insider bid or where the offeror anticipates that a going private transaction will follow the take-over bid, include reference to recent legal developments, if any, relating to the type of transaction or proposed transaction.

Item 21 — Disclosure in Accordance with Form 3:

In the case of a take-over bid to which item 20 applies, include the disclosure required by Form 3, appropriately modified.

Item 22 — Approval of Take-Over Bid Circular:

Where the take-over bid is made by or on behalf of an offeror that has directors as defined in these By-Laws, state that the contents of the take-over bid circular have been approved by its board of directors and that 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 23 — Solicitations:

Disclose any person retained by or on behalf of the offeror to make solicitations in respect of the bid and the particulars of the compensation arrangements.

Item 24 — Certificate:

Include a certificate in the following form signed, where the take-over bid is made by or on behalf of a person, other than an individual, by the chief executive officer, the chief financial officer and on behalf of the board of directors, by any two directors of the person other than the foregoing, all duly authorized to sign* and, where the take-over bid is made by or on behalf of an individual, by the individual:

Form 2 -Take-Over Bid Circular

“The foregoing 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 was made”

*Where the person or company has fewer than four directors and senior officers, the certificate shall be signed by all of them.

Item 25 — Date of Take-Over Bid Circular

Issuer Bid Circular

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 time of payment of the consideration.

Item 7 — Right to Withdraw Deposited Securities:

Describe the rights to withdraw securities deposited pursuant to the bid. State that notice of withdrawal of securities deposited shall be given in a manner that provides the depository designated under the bid with a written or printed copy and shall be actually received by the depository.

Item 8 — Source of Funds:

State the source of any funds to be used for payment and, if such funds are to be borrowed, the terms of the loan, the circumstances under which it shall be repaid and the proposed method of repayment.

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 — Reasons for Bid:

State the purpose and business reasons for the issuer bid, and if it is anticipated that the issuer bid will be followed by a going private transaction, describe the proposed transaction.

Item 11 — Trading in Securities to be Acquired:

Furnish, where reasonably ascertainable, a summary showing,

- (a) the name of each securities exchange or other principal market on which the securities sought are traded;
- (b) in reasonable detail 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 12 — 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, and, where known after reasonable enquiry, by,

- (a) each associate of a director or senior officer of the issuer;
- (b) any person holding more than ten per cent of any class of voting or equity securities of the issuer; and

(c) 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 13 — 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 12, to acquire voting or equity securities of the issuer, and the terms and conditions of any such arrangements, agreements, commitments or understandings.

Item 14 — Acceptance of Bid:

Where known after reasonable inquiry, state the name of every person named in Item 12 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 15 — Benefits from Bid:

State the direct or indirect benefits to any of the persons named in item 12 of accepting or refusing to accept the issuer bid.

Item 16 — 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 17 — Other Benefits to Insiders, Affiliates and Associates:

If any material changes or subsequent transactions are contemplated, as described in Item 10 or 16, 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 18 — 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 19 — 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 20 — 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 without charge 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 21 — 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 upon payment of a nominal charge sufficient to cover printing and postage.

Item 22 — Securities of Issuer to be Exchanged for Others:

Form 3 - Issuer Bid Circular

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 23 — Approval of Bid:

State that 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 that 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 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 shares 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 — Tax Consequences:

Provide a general description of the consequences of the issuer bid under the Income Tax Act to the issuer and to the security holders of any class affected.

Item 27 — Expenses of Bid:

Provide a statement of the expenses incurred or to be incurred in connection with the issuer bid.

Item 28 — Judicial Developments:

Include reference to recent legal developments if any, relating to the type of transaction or proposed transaction.

Item 29 — Other Material Facts:

Describe any,

- (a) material facts concerning the securities of the issuer; and
- (b) 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 30 — Solicitations:

Disclose any person retained by or on behalf of the issuer to make solicitations in respect of the bid and the particulars of the compensation arrangements.

Item 31 — 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.*

“The foregoing 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 was made.”

*Where the issuer has fewer than four directors and senior officers, the certificates shall be signed by all of them.

Item 32 — Date of Issuer Bid Circular

Directors' Circular

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 named 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 or 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 and, where known to the directors or senior officers after reasonable inquiry, whether any 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 six-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 printing 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:

“The foregoing 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 was made”

Item 20 — Date of Directors' Circular

Director's or Officer's Circular

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 or, in each case where none is so owned, a statement to that effect.

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, and state the number of the securities in respect of which the director or officer, or where known, any associate, has accepted or intends to accept the offer.

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 or her 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 an registered security holder upon payment of a nominal charge sufficient to cover printing and postage.

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.

“The foregoing 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 was made”

Item 16 — Date of Director's or Officer's Circular

SCHEDULE 2

(by-law 38)

FEES