

A.S.C. Notice 4

Take-Over Bids, Amalgamations, Mergers and Arrangements

1. From time to time the Alberta Securities Commission (the "Commission") has been approached and asked to consider whether a particular plan of arrangement, merger, amalgamation or other form of corporate reorganization was a "take-over bid" as that term is defined in Part 13 of the Alberta Securities Act (the "Act"). Three such examples were:
 - 1.1 in the matter of Orbit Oil and Gas Ltd. and Europa Petroleum Ltd. concerning a proposed arrangement under the Companies Act (Alberta),
 - 1.2 in the matter of the Bank of British Columbia concerning a proposed merger of the Bank of British Columbia and BBC Realty Investors, and
 - 1.3 a confidential application concerning a triangular amalgamation under the Alberta Business Corporations Act.
2. As a consequence of these enquiries and of general concerns expressed by the practicing bar, the Commission has reviewed the question of the applicability of Part 13 of the Act to amalgamations, mergers, arrangements and other similar forms of corporate reorganizations and has decided to set forth in this notice the Commission's general views on this matter.
3. The Commission is of the view that, in determining the scope of Part 13 of the Act, it is important to distinguish between the terms "take-over" and "take-over bid" which have at times been used interchangeably in submissions made to the Commission. Though the term "take-over" is not defined in the Act, a "take-over" can generally be said to have taken place when a person (individual, company, partnership, or other entity) acquires control over the assets of another company, partnership or other entity (the "Target Company") either directly by becoming the owner of the assets of the Target Company, or indirectly by obtaining control of the Target Company. Several methods can be used to accomplish a take-over including, inter alia, a merger, an arrangement, a statutory amalgamation or a take-over bid. A take-over bid, having the form of an offer to buy sufficient voting securities of the Target Company to obtain control over the Target Company, is simply one of the methods that may be used to accomplish a take-over of the Target Company.
4. An integral component of a take-over bid involves the right of an individual security holder to make a decision respecting the sale of his voting securities which decision to sell will, independent of the decisions made by other security holders (and subject to any rights of withdrawal granted to

security holders generally), become binding upon such security holder. In assessing whether a particular set of facts should be treated as a take-over bid it is important to distinguish between:

- 4.1 an offer, whether direct or indirect, to security holders, in their individual capacity, respecting the purchase of their voting securities in the Target Company and
 - 4.2 a request that security holders as a group, acting in concert in their capacity as security holders (that is, acting as a decision making organ of the Target Company) make a decision that may in fact affect their status as security holders of the Target Company.
5. The Commission is of the view that Part 13 of the Act, entitled “take-over bids and issuer bids” (aside from any consideration of the question of issuer bids) is intended to regulate and impose a form of procedural fairness over take-over bids, being one of the methods that may be employed to accomplish a take-over. Accordingly, Part 13 of the Act will normally not be applicable to amalgamations, mergers or arrangements.