



2022-0001

May 5, 2022

**Normal Course Issuer Bids
Sections 628 and 629**

STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND PARTICIPATING ORGANIZATIONS

*****This Staff Notice replaces TSX Staff Notice 2016-0001, which is repealed in its entirety.*****

Toronto Stock Exchange ("TSX") staff is providing guidance on Sections 628 and 629 of the TSX Company Manual (the "Manual") for frequently asked questions in respect of normal course issuer bids ("NCIBs"). Questions in this Staff Notice have been organized under the following headings: (A) preparing the notice and press release; (B) executing purchases under the NCIB; (C) amending the NCIB; and (D) reporting obligations.

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A. PREPARING THE NOTICE AND PRESS RELEASE

Timing and Documents Required to Commence an NCIB

1) What are the filing requirements to undertake an NCIB?

Section 629 of the Manual requires issuers intending to commence an NCIB to prepare and submit to TSX draft copies of certain documents before they are submitted to TSX in final form. In order to provide TSX time to review and comment on the relevant documents before they are finalized, issuers must file the following documents with TSX at least seven business days prior to the commencement date of the NCIB:

- a) a draft copy of the Form 12—*Notice of Intention to Make an NCIB* (a "Notice" or a "Form 12");
- b) a draft copy of the press release;
- c) a draft copy of the automatic security purchase plan, if applicable;
- d) a detailed calculation of the average daily trading volume ("ADTV"), for issuers that are not investment funds; and
- e) a detailed calculation of the public float, for issuers intending to purchase a number of securities based on their public float.

TSX typically reviews these documents and provides comments within three business days of receipt of all the documents noted above. After TSX has reviewed these documents and provided comments, issuers must file the documents in final executed form at least three business days prior to the commencement date of the NCIB. The Notice must be duly executed by a senior officer or director of the issuer. The press release announcing the NCIB must be issued prior to market open at least two business days prior to the start of the NCIB.

For example, if the commencement date of an NCIB is Monday, March 31, then the draft documentation must be provided to TSX during business hours no later than Thursday, March 20. TSX must have the documents in final form by Wednesday, March 26 and the press release must be issued no later than prior to market open on Thursday, March 27.

Monday	Tuesday	Wednesday	Thursday	Friday
17	18	19	20 Draft documentation to TSX	21
24	25 TSX comments provided	26 Final executed documents to TSX	27 Press release issued prior to market open <hr/> TSX bulletin released	28
31 Commencement date of NCIB				

Reference should also be made to the instructions found in the Notice.

<https://decisia.lexum.com/tsx/f/en/item/454475/index.do>

The broker acting for an NCIB must be a TSX Participating Organization. For a list of TSX Participating Organizations please refer to <http://www.tsx.com/trading/accessing-our-markets/member-firm-directory?l=A>.

Automatic Share Purchase Plans ("ASPP")

ASPPs allow issuers to repurchase their securities under an NCIB during trading blackout periods (the "ASPP Operating Period"), in accordance with a set of pre-established instructions.

2) What is required to implement an ASPP?

The issuer and the buying broker must enter into a formal agreement, substantially in compliance with the Ontario Securities Commission ("OSC") Staff Notice 55-701. The agreement must be pre-cleared by TSX.

If the ASPP is entered into concurrently with the NCIB, the press release announcing the NCIB must state that the issuer has entered into an ASPP.

If the ASPP is entered into after the commencement of an NCIB, a press release must be issued stating that the issuer has entered into an ASPP. TSX does not require a revised Form 12 and there is no fee payable to TSX for entering into an ASPP.

Purchases made under an ASPP should be reported monthly to TSX using the applicable Form 14 — *NCIB Monthly Reporting Form* ("Form 14A or 14B").

- 3) How does an ASPP limit the issuer's ability to provide instructions to its buying broker for purchases under its NCIB?

Trading parameters must be set by the issuer and communicated to the broker prior to entering into a trading blackout period. During the ASPP Operating Period, the broker has discretion to purchase securities under the NCIB, within the trading parameters provided by the issuer. The issuer cannot provide any instructions to the broker during the ASPP Operating Period, including in regards to block purchases. Outside of the ASPP Operating Period, the issuer can direct and provide instructions to the broker.

Average Daily Trading Volume

The ADTV is used to set the maximum number of securities that can be purchased on a daily basis under an NCIB for issuers that are not investment funds. Issuers that are not investment funds can purchase, on a daily basis, no more than the greater of 25% of the ADTV and 1,000 securities (the "Daily Limit") pursuant to an NCIB.

- 4) How is the average daily trading volume ("ADTV") calculated?

The ADTV is calculated based on the most recently completed six calendar months preceding the date of acceptance of the Notice. For example, if the NCIB is set to start on June 15, the ADTV would be calculated for the period from December 1 to May 31.

- 5) If 25% of the ADTV calculation is 5,854.25 shares, what is the Daily Limit?

The Daily Limit should be rounded down to the nearest whole number. In this instance, the Daily Limit is 5,854.

- 6) Are transactions made on other marketplaces (including Canadian ATSS) included in the trading volume to calculate the ADTV?

No. Only trading volumes that occurred on TSX are considered, as per the ADTV definition provided in Subsection 628(a)(i) of the Manual.

Interlisted Issuers

- 7) If an issuer is repurchasing its securities on a marketplace outside Canada, can it appoint two buying brokers, for example, one for purchases on TSX and one for purchases on NASDAQ?

Yes, provided that the buying broker appointed for the purchases on the other marketplace outside Canada cannot directly place orders on TSX. Only one buying broker can make purchases on TSX under the NCIB. Purchases made on all marketplaces will count towards the maximum number of securities which may be purchased under the NCIB over the 12-month period, as stated in the Form 12 filed by the issuer, (the "Annual Limit").

- 8) If an issuer commenced an NCIB on another marketplace outside Canada and during that NCIB, the issuer decides that it also wants to make purchases on TSX, what does the issuer need to do?

The issuer should amend the bid that it commenced on the other marketplace so that it can also acquire securities on TSX. The issuer must file a Form 12 with the required documentation as described in "*Timing and Documents Required to Commence an NCIB*" with TSX. Any securities acquired under the bid on the other marketplace will count towards the Annual Limit.

- 9) If an interlisted issuer undertakes an NCIB and all purchases are made on the other exchange, what are the filing requirements with TSX?

If the purchases are not being made through the facilities of TSX, the NCIB is not subject to TSX rules and approval. A Form 12 need not be filed with TSX, nor does the Form 14A or 14B to report purchases need to be filed with TSX. However, cancelled securities must be reported to TSX monthly by filing a Form 1—*Change in Outstanding and Reserved Securities* ("Form 1").

Issued & Outstanding or Public Float Calculation

<p><i>The number of issued and outstanding securities or the public float is used to set the Annual Limit.</i></p>
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- 10) Should securities that are not freely tradable (e.g. subject to resale restrictions or escrow) be included in the public float or the number of issued and outstanding securities?

Securities that are pooled, escrowed or non-transferable cannot be included in the public float, but can be included in the number of issued and outstanding securities.

- 11) If an issuer is proposing an NCIB for its common shares, can it include securities that are convertible or exchangeable into common shares such as warrants or convertible debentures to calculate the number of issued and outstanding securities or the public float?

No. Only the securities of the class subject to the NCIB which are issued and outstanding are included in the calculation.

TSX will make an exception, however, if an issuer has two classes of listed securities that are automatically interconvertible, without any action on the part of the issuer or security holder, for example securities that are interconvertible based on the residency of the security holder

- 12) If an issuer buys the maximum number of securities permitted by TSX pursuant to an NCIB or otherwise prior to the expiry of the 12-month period, can it file a new NCIB and continue to purchase securities?

No. The issuer cannot undertake a new NCIB before the 12-month period has expired.

Material Undisclosed Information and Blackout

- 13) Can an issuer commence an NCIB if it has material undisclosed information or are in a blackout?

An issuer may begin an NCIB during a blackout if the issuer provides written confirmation that there is no material undisclosed information. Under a blackout there is a presumption of material undisclosed information (which would preclude starting the NCIB), but this presumption can be refuted with written representation in the Form 12 to confirm that the issuer does not have material undisclosed information despite being in blackout. This written representation should be captured in the Form 12 under question 13 (other information). No additional disclosure is needed for the press release for this matter.

Press Release

- 14) What information should be included in the press release?

Issuers should summarize the material aspects of the contents of the notice, including the following:

- the number of securities the listed issuer intends to repurchase and the percentage it represents;
- the issued and outstanding number and the public float, if applicable.
- if not an investment fund, ADTV for the past six calendar months and daily limit (i.e. 25% of ADTV).
- if an investment fund, 2% of issued and outstanding securities;
- duration of the NCIB;
- the markets on which purchases will be made;
- the reason for the NCIB;
- any restrictions under the NCIB; and
- details of any previous purchases in the preceding 12-month period, including the maximum number of securities that the listed issuer sought and obtained approval to purchase, the number of securities purchased, the manner in which the securities were purchased (i.e. on the market or pursuant to exemption orders issued by securities regulatory authorities), and the volume weighted average price paid; and any other significant info (for example, any special exemptions, automatic securities purchase plan).

B. EXECUTING PURCHASES UNDER THE NCIB

Alternative Trading Systems ("ATsSs")

15) If an issuer is proposing an NCIB with TSX, can it buy securities on a Canadian ATsS?

In Canada, there are a number of marketplaces or ATsSs trading securities listed on TSX. Issuers and their buying brokers making purchases on ATsSs must satisfy themselves that they are properly relying on an issuer bid exemption under applicable securities laws and are in compliance with those requirements, some of which differ from TSX requirements.

TSX does not have an objection to an issuer buying its securities on Canadian ATsSs provided that it has been disclosed under the heading "Method of Acquisition" in section 3(a) of the Notice as well as in the press release. If the issuer intends to buy its securities on Canadian ATsSs, the disclosure in the press release must indicate that purchases may be made on the open market through the facilities of TSX and/or alternative Canadian trading platforms.

Issuers are reminded that many of the brokers use smart order routers which may direct purchases to all marketplaces in Canada. An issuer stating that its NCIB purchases will only be made through the facilities of TSX should ensure that its buying broker is aware of the marketplace limitation and the buying broker may not be able to use its smart order router.

16) Do TSX NCIB requirements apply to purchases made on other marketplaces?

Purchases made on other marketplaces are not subject to the TSX trading restrictions such as upticks, trading prohibition at the opening or the close and the Daily Limit (there may be other limitations or restrictions that are subject to purchases on these marketplaces). However, for the purpose of calculating the Annual Limit of securities that may be purchased on TSX pursuant to an NCIB, issuers must include purchases made through the facilities of a stock exchange or otherwise, but may exclude purchases made under a circular bid.

TSX reminds issuers and buying brokers making purchases on other marketplaces to satisfy themselves that the issuer bid is compliant with applicable securities laws and the requirements of the other marketplaces. For example, TSX notes that section 101.2 of the *Securities Act* (Ontario) contains conditions for the issuer bid exemption, including bids made on a published market other than a designated exchange. TSX is a designated exchange for the purposes of the *Securities Act* (Ontario), however not all marketplaces (Canadian or foreign) are designated exchanges.

Block Purchases

Once every calendar week, issuers may exceed their Daily Limit by making a block purchase.

17) Can a broker execute a block trade with multiple sellers, all represented by the same broker, or bundle pre-existing blocks to sell into one purchase order under an NCIB?

No. The block purchase exception was created to allow an issuer to repurchase a large naturally occurring block in the market. Sell orders cannot be combined for the purpose of creating a block and relying on the block purchase exemption. Nor may pre-existing blocks be combined into one sell order.

18) Can the issuer make a block purchase once it has used up all or a portion of its Daily Limit?

Yes. In addition to the Daily Limit, the issuer may make one block purchase per calendar week. The block purchase is in addition to the Daily Limit, but once the block purchase has occurred, the issuer may not make any further purchases for the remainder of the trading day.

19) Can a block trade under the block purchase exception be with a broker other than the one assigned to conduct the purchases under the NCIB?

No. TSX requires that all purchases made on TSX be conducted by one buying broker because the buying broker must be aware of all purchases being made under the NCIB to ensure compliance with all of the requirements.

Issuers are reminded that a purchase of a number of securities that is greater than the Daily Limit does not necessarily meet the definition of a "block".

Block purchases made pursuant to an NCIB must be reported monthly to TSX using Form 14A or 14B.

Non-Independent Plans

In certain circumstances, a trustee or other purchasing agent for a pension, stock option or other plan in which employees or security holders may participate, is deemed to be non-independent and therefore making an offer to acquire securities on behalf of the listed issuer, as provided in Subsection 629(j) of the Manual.

20) Are purchases made on the market by a non-independent trustee counted toward NCIB limits?

Yes. Trustees that are deemed to be non-independent are subject to the Annual Limit and Daily Limit, as well as Subsections 629(k) and (l) of the Manual. Purchases by non-independent trustees must be reported on a monthly basis using Form 14A or 14B, together with any other purchases made under the NCIB.

Odd Lot/Small Shareholder Program

Odd lot programs are intended to facilitate odd lot sales at a reasonable costs to listed issuers and their security holders. While it is possible to have both an NCIB and an odd lot program in effect at the same time, certain special considerations apply.

21) If an issuer has an NCIB and an odd lot purchase arrangement, is it possible to use such arrangement to purchase securities for cancellation under the NCIB?

No. The purpose of an odd lot program is to buy the odd lots in the market and aggregate them for sale in the board lot market, not to cancel the securities. An odd lot purchase arrangement can run concurrently with an NCIB, but securities purchased pursuant to such arrangement cannot be purchased by an issuer under an NCIB.

Off-Exchange Block Purchases

22) What are the requirements for an issuer to proceed with off-exchange block purchases pursuant to an exemptive relief order (“Order”) from its principal securities regulator while conducting an NCIB on TSX?

If an issuer intends to make off-exchange block purchases under an Order while conducting an NCIB, the Notice and the press release must clearly disclose this information. Furthermore, the Notice and the press release should also state that such purchases will be at a discount to the prevailing market price. TSX understands that the securities regulator also typically requires the issuer to disclose its intention to proceed with off-exchange block purchases in a press release.

If the issuer decides to undertake off-exchange block purchases after the commencement of its NCIB, it must file an amended Form 12¹ and issue a press release announcing the amendment and stating its intention to proceed with off-exchange block purchases.

TSX understands that where an issuer has obtained an Order for off-exchange block purchases, the Order will include specific disclosure requirements. When an issuer has obtained an Order for a single discrete off-exchange block purchase, TSX understands that the Order typically requires the issuer to issue a press release when it has completed the off-exchange block purchase that discloses: (a) the number of securities purchased; (b) the purchase price (in aggregate is acceptable); (c) the fact that the purchase price was at a discount to the market price; (d) that the purchases were made by way of private agreement under an Order; and (e) that the purchased securities will be accounted for in the Annual Limit.

When an issuer has obtained an Order to complete off-exchange purchases in multiple tranches, TSX understands that the Order typically requires the issuer to issue a press release giving notice: (a) that the Order has been obtained; (b) of its intention to purchase up to a maximum number of securities from a particular seller within a specified period of time; and (c) that information confirming individual purchases will be posted on SEDAR promptly after they occur. Given that the purchases are made under the terms of the Order, TSX will not require additional disclosure for the purchases.

TSX reminds issuers to follow the disclosure requirements set out in the applicable Order.

Any off-exchange block purchases made pursuant to an NCIB should be reported monthly to TSX using Reporting Form 14A or 14B.

¹ Item d. under 3. *Method of Acquisition* must be amended to provide that purchases will be made other than by means of open market transactions.

Trading Rules Applicable to NCIBs

TSX has established a set of rules for listed issuers and brokers acting on their behalf in the context of executing trades under an NCIB. They are described in Subsection 629(l) of the Manual and provide for items such as the price at which securities may be purchased, prearranged trades and purchases at the opening and close of the market.

23) Can a broker buy back directly from offers originating from its own client selling from the same desk?

It is acceptable if the broker executes a buy order which is exposed to the market and a sell order happens to match. However, it is unacceptable to set up a cross or intentionally buy with the knowledge that a client is selling; this would be a pre-arranged trade, which is prohibited (other than with respect to the block purchase exception). Buying brokers should also be cautious with illiquid securities to ensure that the NCIB buy order is exposed for a sufficient period of time before entering a sell order that the broker knows will match.

24) The Manual prohibits purchases pursuant to an NCIB at the opening of a trading session. Does it mean that the broker needs to wait until a first trade is made prior to making purchases for an NCIB?

No. Only trades occurring between 9:30 a.m. and 9:31 a.m. will be subject to the restrictions relating to trades at the opening of a trading session. However, if there is an independent trade on TSX within the first minute of the opening trading session, then a purchase can be made before 9:31 a.m. A broker may make an NCIB purchase after 9:31 a.m., even if it sets the opening price. A buying broker should not enter an NCIB order if both of the following are true: i) it is before 9:31 a.m.; and ii) the trade would set the opening price on TSX.

25) The Manual prohibits purchases pursuant to an NCIB during the last 30 minutes of the trading session. Can an issuer purchase securities pursuant to an NCIB through the market on close ("MOC") facility?

Brokers may enter buy orders through the MOC facility after 3:57 p.m. (Toronto time) (including when there is a buy or sell imbalance) and can only bid for the maximum amount of the displayed imbalance, as long as the NCIB has room left on its Daily Limits (i.e. the size of the order, when combined with other purchases on that day, cannot exceed the Daily Limit). Brokers may only make one order per day through the MOC facility and orders must be placed as a limit order. Purchases in the regular book during the last half hour of the trading session are not permitted.

26) If a broker makes NCIB purchases that are non-compliant with the Manual, for example, by creating an uptick or purchasing securities in the last 30 minutes of the trading session, what should be done with the purchased securities?

These securities should be placed in the broker's inventory and should not be delivered to the issuer's account.

27) Can securities purchased in error under an NCIB which are taken into inventory by the buying broker firm be resold into such NCIB?

No. Such trades would be considered pre-arranged trades and contrary to Subsection 629(l)(2) of the Manual. Brokers reselling such securities into the market should ensure that the securities are not resold into the issuer's NCIB by, for example, temporarily ceasing purchases under the NCIB until the resale has been completed.

28) If there is a higher trade price on an ATS, can I enter that price for purchases on TSX and not be deemed to have created an uptick?

Yes. For the purposes of determining whether the broker has created an "uptick", TSX would consider the last independent trading price published on any Canadian marketplace.

C. AMENDING THE NCIB

Number of Securities Sought

Once adopted, listed issuers may want to amend the terms of their NCIB, for example, by increasing the maximum number of securities that may be purchased under the NCIB, making purchases on other markets or entering into an ASPP. There is no fee for amending an NCIB.

29) Can an issuer increase the maximum number of securities sought under its NCIB?

Yes. Pursuant to Subsection 629(i) of the Manual, an issuer may amend its Notice to increase the number of securities sought, provided that it does not exceed the Annual Limit.

If the number of issued and outstanding securities which are the subject of the NCIB has increased by more than 25% from the number that was issued and outstanding as at the date of the initial Notice, issuers may amend their Annual Limit based on the number of issued and outstanding securities at the time of filing the amended Notice. The Daily Limit should also be based on the ADTV at the time of filing of the amended Notice.

Amendments and Terminations

30) What is required to amend an NCIB?

An updated Form 12 is required, reflecting the proposed amendment to the NCIB. A press release should be issued to disclose the amendment once TSX has approved the amendment. In certain circumstances, TSX may also issue a bulletin to alert market participants of the change. The amendment may become effective two trading days after the later of: i) the issuance of the press release by the issuer; and ii) the bulletin issued by TSX.

31) Can an issuer terminate its current NCIB early and commence a new NCIB?

Yes, however, TSX will require that the issuer deduct from the Annual Limit for the new NCIB the number of securities the issuer has purchased under the terminated NCIB. TSX requires this deduction to ensure compliance with the Annual Limit for the new NCIB. This deduction must be disclosed in the press release.

Amendments to ASPPs

32) Is a press release required when an ASPP is amended? In particular, is it required if the trading parameters are altered?

A press release is only required if the amendment to the ASPP is material information. TSX does not typically consider the trading parameters of an ASPP to be material, however, if the initial press release disclosed the trading parameters, then amendments to such trading parameters should be disclosed.

TSX considers a cancellation or suspension of an ASPP to be material information that must be disseminated by press release.

Changing the Broker Assigned to the NCIB

33) What is required if an issuer decides to change its broker during the NCIB?

The issuer must notify TSX in writing of its intention to change brokers and must include the name of the issuer's current broker and the name of the new broker and registered representative. TSX will send a letter to the issuer confirming the change of broker, a letter to the previous broker confirming that it has ceased to be the buying broker for the NCIB, and a letter to the new broker confirming its appointment. The letters will also confirm the effective date of the change.

D. REPORTING OBLIGATIONS

Issuers must report their purchases on a monthly basis using Form 14A (for investment funds) or Form 14B (for non-investment fund issuers), available at the following link [TSX Reporting Forms 14A and 14B](#). This form must be submitted within ten (10) days of the end of each month in which purchases are made under a NCIB, whether the securities were purchased through the facilities of TSX or otherwise. Purchases made through the facilities of TSX must be reported in the designated area, separately from purchases made on other markets or off-exchange. Purchases made under an issuer bid circular do not count towards NCIB purchases and should not be reported using Form 14A or 14B, but reported using Form 1, which must be filed within ten (10) days of the end of the month.

34) Can the filing of Form 14A or 14B be delegated to the broker conducting the purchases?

Yes. The filing of Form 14A or 14B may be delegated to the broker conducting the purchases. Cancelled securities must be reported to TSX when filing the monthly Form 1 so that TSX can update the issuer's number of issued and outstanding securities.

35) How are NCIB purchases of debentures reported?

If reporting purchases of debentures, report the principal amount of debentures purchased.

For further information, please contact the LIS Manager who is responsible for the issuer, details for which can be found at <http://www.tsx.com/listings/tsx-and-tsxv-issuer-resources/tsx-issuer-resources/tsx-listings-staff>. You may also contact a reporting agent for more information on how

to report purchases. Reporting agent contact information can be found at: <http://www.tsx.com/listings/contact-us?lang=en> under the "Listed Issuer Services" tab.

E. ADDITIONAL STAFF NOTICES

Please also refer to the following Staff Notices for additional information:

- [Staff Notice 2008-0001](#) dated July 21, 2008—Section 628 (Calculating securities acquired under a normal course issuer bid)
- [Staff Notice 2008-0003](#) dated September 29, 2008—Section 629 (Special Rules Applicable to Normal Course Issuer Bids) Non-Independent Trustees
- [Staff Notice 2012-0002](#) dated June 8, 2012—Normal Course Issuer Bids Section 628 and 629