

- 1 hot issues
- 2 securities lingo brain teaser

1 hot issues

Normal Course Issuer Bids (NCIBs)

An NCIB is the action of a company buying back its own outstanding shares from the market so it can cancel them, thus reducing the number of outstanding shares and increasing the value of each share. Also known as a share buyback or share repurchase.

A buyback can be viewed as a vehicle for a company to invest in itself. Buybacks are mostly executed in two ways:

1. Companies buy back shares on the open market over an extended period of time.
2. Shareholders may be presented with a tender offer whereby they have the option to submit (or tender) a portion or all of their shares within a certain time frame and at a premium to the current market price. This premium compensates investors for tendering their shares rather than holding on to them.

What the Rules say: Normal Course Issuer Bids for TSX Listed Companies (non investment funds)

Guidelines (TSX Company Manual – Part VI Changes in Capital Structure of Listed Issuers – Section 628, TSX-V Company Manual – Policy 5.5 and Appendix 5A)

Daily purchase restrictions

Issuer can purchase **the greater of:**

- 25% of the average daily trading volume; or
- 1,000 securities

12-month period restrictions

Commencing on the date specified in the notice of the NCIB

Issuer's purchases cannot exceed **the greater of:**

- 10% of the public float on the date of acceptance of the notice of NCIB by the TSX
- 5% of such class of securities issued and outstanding on the date of acceptance of the notice (includes public float shares held by insiders and other shares subject to resale restrictions, excludes warrants)

Temporary Relief issued by TSX (TSX Staff Notice 2008 – 0005)

Effective November 3, 2008 – March 31, 2009

Daily purchase restrictions

Issuer can purchase **the greater of:**

- 50% of the average daily trading volume; or
- 1,000 securities

General Process and Key Points (TSX Issuers) – Issuer Board Approval Needed – not Shareholder Approval

1. The filing of a draft Notice of Intention (Form 12 – Notice of Intention to Make a Normal Course Issuer Bid, found in Appendix H of the TSX Company Manual – not signed, and draft press release) with the TSX is a declaration by the listed issuer that it has a present intention to acquire securities. The notice must set out the number of securities that the issuer's Board of Directors has determined may be acquired.
2. When the notice is in a form acceptable to the TSX, the listed issuer shall file the notice in final form, duly executed by a senior officer or director of the listed issuer, for acceptance by the TSX. The final form of the notice must be filed at least two clear trading days prior to the commencement of any purchases under the bid.
3. The listed issuer will issue a press release indicating its intention to make an NCIB (subject to TSX acceptance, prior to acceptance of the executed notice by the TSX). The press release should summarize the material aspects of the contents of the notice, including the number of securities sought, the method of disposition (if applicable), the reason for the bid and details of any previous purchases in the preceding 12 months, including the number of securities purchased and the average price paid.
4. An NCIB shall **not extend for a period of more than one year** from the date on which purchases may begin.
5. The listed issuer shall include a summary of the material information contained in the notice in the next annual report, information circular, quarterly report or other document mailed to security holders. The document should indicate that security holders may obtain a copy of the notice, without charge, by contacting the listed issuer.
6. An NCIB may commence on the date that is two trading days after the later of:
 - Date of acceptance by TSX; or
 - Date of issuance of the press release.

7. The issuer must report its purchases to the TSX within 10 days of the end of each month, using Form 14, NCIB Monthly Reporting Form, stating the number of securities purchased during that month, giving the average price paid and stating whether the securities have been cancelled, reserved for issuance or otherwise dealt with. Nil reports are not required.
8. During an NCIB, an issuer may decide to amend its notice by increasing the number of securities sought while not exceeding the maximum limits. The issuer is required to file the amended notice in final form at least three clear trading days prior to the commencement of any purchases under the amended bid, and also to issue a press release as soon as the amended notice is accepted by the TSX.

An issuer should work closely with their transfer agent to manage the NCIB process.

Transfer Agent Procedures (courtesy of Valiant Trust Company)

- If the NCIB is tendered by a broker, the share certificates are delivered to the transfer agent with instructions to cancel the shares under the NCIB; in this case the certificates are typically in the name of the broker and are duly endorsed and guaranteed. The transfer agent then must obtain from the issuer a **Return to Treasury** direction in order to cancel the shares. Payment to the shareholder in this case would come from the Broker.
- If the shares are tendered through CDS, then the broker will request a withdrawal and the transfer agent will issue a physical certificate and hold it in escrow until a **Return to Treasury** order has been provided by the issuer (this often comes in advance as the transaction is meditated). The physical certificate will then be cancelled from the share register. In this case the certificate does not need to be signed off or endorsed.

Automatic Purchase Plans (APP)

Purchases under an NCIB are not permitted while the issuer has material undisclosed information; an exception to this prohibition allows an issuer to put an NCIB APP plan in place, when there is no material undisclosed information to allow for regular purchases throughout the year. Many senior issuers who wish to buy throughout the year have implemented APPs because they would otherwise be limited to NCIB purchases for only for a few weeks due to blackouts. An NCIB APP plan may not be changed while there is material undisclosed information. One disadvantage of NCIB APP is flexibility. This type of plan must again be pre-cleared with the TSX and include disclosure in the notice and press release.

Multiple Marketplaces

Many dealers acting as buying brokers have routers which automatically direct marketplace trades based on best execution rules. Purchases on marketplaces other than TSX and TSX V (such as Alpha, Pure etc) are not governed by TSX or TSX V rules, but rather provincial securities legislation. Issuers purchasing over other marketplaces should include appropriate disclosure in the notice and press release; otherwise a new notice and press release will be required.

Average daily trading volume (ADTV) – the trading volume for the previous **six months** preceding the date of acceptance of the notice of NCIB by the TSX, excluding any purchases made by the issuer through the TSX under its NCIB during such six months, divided by the number of trading days.

NCIB Pros:

- Signal to the market that management feels its shares are undervalued
- Manage earnings per share – EPS (gradually increases EPS by reducing share count)
- Reduce dilution from employee stock options
- Increase financial leverage (lower cost of capital which enhances shareholder value)

NCIB Cons:

- NCIBs reduce an issuers liquidity (as cash used to purchase shares)
- May not be viewed positively if management has limited credibility
- NCIBs do not always improve share price
- Reduces share liquidity as fewer shares available for trading

In summary, if the share price is truly below value, a buyback transfers wealth for the selling shareholders to continuing shareholders. The resulting increase in expected value per share holds with management’s objective to maximize shareholder value for its continuing shareholders. NCIBs may appear attractive, but reinvesting in the business may provide to be a better opportunity and thus NCIBs must be reviewed carefully. Companies that want to maximize shareholder value should fund the highest return opportunities first.

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