

ANNEX D

PROPOSED CHANGES TO NATIONAL POLICY 62-203 TAKE-OVER BIDS AND ISSUER BIDS

1. *The changes proposed to National Policy 62-203 Take-Over Bids and Issuer Bids are set out in this Schedule.*
2. *Section 1.1 is changed*
 - (a) *by replacing “Multilateral” with “National”,*
 - (b) *by deleting “, except Ontario, and has been implemented as a rule or regulation in all jurisdictions, except Ontario. Part XX of the Securities Act (Ontario) (the Ontario Act) and Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids (the Ontario Rule) govern take-over bids and issuer bids in Ontario only.”, and*
 - (c) *by replacing “This Policy, the Instrument, the Ontario Act and the Ontario Rule are collectively” with “This Policy and the Instrument are together”.*
3. *Section 2.1 is changed by adding “:” after “objectives”.*
4. *Section 2.2 is changed by deleting, in the first paragraph, “in section 1.1 of the Instrument and subsection 89(1) of the Ontario Act” and “and subsection 89(1) of the Ontario Act”.*
5. *Section 2.7 is changed by deleting “or clause 4.1(1)(b)(ii)(B) of the Ontario Rule”.*
6. *The following sections are added:*
 - 2.10 Take-over bid deposit period** – The Bid Regime requires all non-exempt take-over bids to remain open for a minimum deposit period of 120 days (section 2.28.1 of the Instrument). The 120 day minimum deposit period applies except in the following circumstances:
 - (a) the offeree issuer states in a news release a shorter deposit period for the bid of not less than 35 days that is acceptable to the offeree issuer board (section 2.28.2 of the Instrument); or
 - (b) the issuer issues a news release that it has agreed to enter into, or has determined to effect, a specified alternative transaction (section 2.28.3 of the Instrument).

Where a shorter minimum deposit period applies, an offeror that has not yet commenced its take-over bid can avail itself of the shorter minimum deposit period by establishing an initial deposit period of at least the number of days specified in the deposit period news release. In the case of an alternative transaction, section 2.28.3 of the Instrument permits an offeror to establish an initial deposit period of as few as 35 days.

If an offeror has already commenced a take-over bid when a deposit period news release is issued or an alternative transaction is announced, sections 2.28.2 and 2.28.3 of the Instrument do not require the offeror to shorten the deposit period for its bid, nor do they apply to automatically shorten the initial deposit period of its bid. To avail itself of the

permitted shorter initial deposit period, the offeror must vary its take-over bid in accordance with section 2.12 of the Instrument to reflect the earlier expiry date for the bid. As a consequence, the offeror must allow securities to be deposited under its bid for at least 10 days after the notice of variation even if the offeror's take-over bid would otherwise have already satisfied the shorter minimum deposit period.

- 2.11 Deposit period news release** – A “deposit period news release” is defined, in part, as a news release issued by an offeree issuer in respect of a “proposed or commenced” take-over bid. A take-over bid is “proposed” if a person publicly announces that it intends to make a take-over bid for the securities of an offeree issuer. An anticipated but unannounced take-over bid or possible future take-over bid would not constitute a “proposed” take-over bid within the meaning of this definition.

A deposit period news release will state an initial deposit period for a take-over bid acceptable to the board of directors of the offeree issuer of not more than 120 days and not less than 35 days. A deposit period news release must describe the acceptable minimum deposit period by referring to a number of days from the date of the bid and not to specific calendar dates in order to facilitate the generic application of the shorter minimum deposit period to multiple take-over bids.

- 2.12 Multiple deposit period news releases** – The Bid Regime does not restrict an offeree issuer from issuing multiple deposit period news releases in respect of a take-over bid or contemporaneous bids. While likely rare, we anticipate that there may be circumstances where an offeree issuer determines to further shorten a previously stated acceptable initial deposit period for a take-over bid or determines to state an acceptable shorter initial deposit period for a take-over bid after it had previously stated an acceptable initial deposit period for another take-over bid. In the event that an offeree issuer issues multiple deposit period news releases, the provisions in section 2.28.2 of the Instrument should be interpreted such that the shortest initial deposit period stated in a deposit period news release applies to all take-over bids that are subject to section 2.28.2 of the Instrument.

- 2.13 Alternative transaction** – Section 2.28.3 of the Instrument provides that, in certain circumstances, the initial deposit period for a bid must be at least 35 days from the date of the bid if an issuer issues a news release announcing that it has “agreed to enter into, or determined to effect,” an alternative transaction. An agreement to enter into an alternative transaction should be interpreted as having occurred when the issuer first makes a legally binding commitment to proceed with the alternative transaction, subject to conditions such as security holder approval.

Where an issuer does not technically negotiate an alternative transaction with another party, such as in the case of a share consolidation, a determination to effect the alternative transaction should be interpreted as having occurred when the issuer's board of directors decides to proceed with the alternative transaction, subject to conditions.

Paragraph (b) of the definition of “alternative transaction” refers to “a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer.” This refers to the acquisition of all of the issuer and not merely the acquisition of a control position.

- 2.14 Alternative transaction – reliance on issuer news release** – Section 2.28.3 of the Instrument provides for the reduction of the initial deposit period for a take-over bid to 35 days if an issuer issues a news release announcing that it has agreed to enter into, or

determined to effect, an alternative transaction. Section 2.28.3 of the Instrument applies in respect of any transaction announced by an issuer that may reasonably be interpreted to be an “alternative transaction”. An issuer that does not consider a transaction to be an alternative transaction for the purposes of section 2.28.3 of the Instrument should state that fact in its news release in respect of the transaction only if it believes that the transaction could be erroneously interpreted as an “alternative transaction”.

2.15 Change in information – Subsection 2.11(5) of the Instrument provides that the initial deposit period for a take-over bid must not expire before 10 days after the date of a notice of change. If an offeror is required to send a notice of change in circumstances where the initial deposit period would expire less than 10 days from the date of the notice of change then the offeror would be obliged to further extend the initial deposit period to ensure that at least 10 days have elapsed before the expiry of the initial deposit period. .

7. These changes become effective on [●].

