



Canadian Securities
Administrators

Autorités canadiennes
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CSA Notice and Request for Comment

Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*

Proposed Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids*

and

Proposed Consequential Amendments

March 31, 2015

INTRODUCTION

The Canadian Securities Administrators (the **CSA** or **we**) are publishing, for a 90 day comment period, proposed amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) and changes to National Policy 62-203 *Take-Over Bids and Issuer Bids* (**NP 62-203**) (collectively, the **Proposed Bid Amendments**).

Currently, MI 62-104 governs take-over bids and issuer bids in all jurisdictions of Canada, except Ontario. In Ontario, substantively harmonized requirements for take-over bids and issuer bids are set out in 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**). NP 62-203 applies in all jurisdictions of Canada. In this Notice, MI 62-104, the Ontario Act, the Ontario Rule and NP 62-203 are collectively referred to as the **take-over bid regime** or **bid regime**.

The Ontario Securities Commission intends to seek legislative amendments to the Ontario Act to accommodate the adoption of MI 62-104 in Ontario, as amended by the Proposed Bid Amendments and the Proposed Market Price Amendment (as described below) (such amended instrument, **Proposed NI 62-104**). The proposed repeal of the Ontario Rule and the related consequential amendments necessary to facilitate the adoption of Proposed NI 62-104 in Ontario (the **Proposed Harmonization**) are set out in Annex M to the version of this Notice published in Ontario.

As a result of the Proposed Bid Amendments and the Proposed Harmonization, we are proposing to make related consequential amendments to each of the following, in the applicable jurisdictions in which such instruments and/or policies have been adopted (collectively, the **Consequential Amendments**):

- Multilateral Instrument 11-102 *Passport System* (**MI 11-102**);
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (**MI 13-102**);
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**);

- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**);
- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (**55-104CP**);
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**);
- Companion Policy 61-101CP to MI 61-101 (**61-101CP**); and
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**).

Additionally, we are proposing a technical amendment to the meaning of “market price” in MI 62-104 (the **Proposed Market Price Amendment**) as it relates to securities acquired pursuant to an issuer bid that is made in the normal course on a published market other than a designated exchange in reliance on the normal course issuer bid exemption set out in paragraph 4.8(3)(c) of MI 62-104.

The texts of the Proposed Bid Amendments, Proposed Market Price Amendment and Consequential Amendments are set out in Annexes B to L of this Notice and will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
 www.albertasecurities.com
 www.bcsc.bc.ca
 www.msc.gov.mb.ca
 www.gov.ns.ca/nssc
 www.nbsc-cvmnb.ca
 www.osc.gov.on.ca
 www.fcaa.gov.sk.ca

SUBSTANCE AND PURPOSE OF THE PROPOSED BID AMENDMENTS

1. Overview of the Proposed Bid Amendments

In general, we intend the Proposed Bid Amendments to enhance the quality and integrity of the take-over bid regime and rebalance the current dynamics among offerors, offeree issuer boards of directors (**offeree boards**), and offeree issuer security holders by (i) facilitating the ability of offeree issuer security holders to make voluntary, informed and co-ordinated tender decisions, and (ii) providing the offeree board with additional time and discretion when responding to a take-over bid.

Specifically, the Proposed Bid Amendments require that all non-exempt take-over bids

- (1) receive tenders of more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror (the **Minimum Tender Requirement**);
- (2) be extended by the offeror for an additional 10 days after the Minimum Tender Requirement has been achieved and all other terms and conditions of the bid have been complied with or waived (the **10 Day Extension Requirement**); and
- (3) remain open for a minimum deposit period of 120 days unless
 - (a) the offeree board states in a news release a shorter deposit period for the bid of not less than 35 days that is acceptable to the offeree board, in which case all contemporaneous take-over bids

must remain open for at least the stated shorter deposit period, or

- (b) the issuer issues a news release that it has agreed to enter into, or determined to effect, a specified alternative transaction, in which case all contemporaneous take-over bids must remain open for a deposit period of at least 35 days

(the **120 Day Requirement**).

We are also proposing amendments to other aspects of the take-over bid regime relating to these key amendments.

2. Objectives of the Proposed Bid Amendments

(1) Minimum Tender Requirement

The Minimum Tender Requirement establishes a mandatory majority acceptance standard for all take-over bids, whether a bid is made for all or only a portion of the outstanding securities. The purpose of the majority standard is to address the current possibility that control of, or a controlling interest in, an offeree issuer can be acquired through a take-over bid without a majority of the independent security holders of the offeree issuer supporting the transaction if the offeror elects, at any time, to waive its minimum tender condition (if any) and end its bid by taking up a smaller number of securities.

The Minimum Tender Requirement allows for collective action by security holders in response to a take-over bid in a manner that is comparable to a vote on the bid. Collective action for security holders in response to a take-over bid is difficult under the current bid regime, where an unsolicited offeror's ability to reduce or waive its minimum tender condition may impel security holders to tender out of concern that they will miss their opportunity to tender and be left holding securities of a controlled company. Coupled with the 10 Day Extension Requirement, the Minimum Tender Requirement is intended to mitigate this "pressure to tender".

(2) 10 Day Extension Requirement

The 10 Day Extension Requirement is intended to provide offeree issuer security holders who have not tendered their securities to a take-over bid with an opportunity to participate in the bid after a majority of independent security holders have tendered to the bid and it is known that the bid will succeed.

Currently, offerors are not required to extend their bids after they have taken up offeree issuer securities and there is no formal mechanism for offeree issuer security holders to coordinate their actions in the bid context. As a result, offeree issuer security holders make tender decisions without knowing what other security holders will do and with the awareness that the offeror can always elect to waive its minimum tender condition (if any) and end its bid by taking up a smaller number of securities, thereby altering the future control of the offeree issuer. This situation creates "pressure to tender" or coercion concerns since security holders may tender to the take-over bid or sell in the market not because they support the bid but because they are afraid of being "left behind" if the offeror obtains sufficient tenders from other security holders.

The 10 Day Extension Requirement addresses the "pressure to tender" concern by protecting the security holder's ability to tender whether or not it supports the bid in the first instance. As well, by mitigating coercive dynamics in the tender process, the 10 Day Extension Requirement enhances the quality and integrity of the collective majority security holder decision on whether or not to approve the bid.

(3) 120 Day Requirement

The 120 Day Requirement is intended to provide offeree boards with a longer, fixed period of time to consider and respond to a take-over bid. The current take-over bid regime mandates a minimum 35 day deposit period. Where a board has adopted a security holder rights plan (a **Rights Plan**) to prevent a bid from being completed after 35 days, securities regulators have typically cease-traded the Rights Plan approximately 45-60 days after the commencement of the bid.

The 120 Day Requirement responds to the concern, as expressed by some commenters on the CSA Proposal and AMF Proposal (each as defined below), that offeree boards do not have enough time to respond to unsolicited take-over bids with appropriate action, such as seeking value-maximizing alternatives or developing and articulating their views on the merits of the bid.

We are, however, proposing two important exceptions as part of the 120 Day Requirement.

The first exception we are proposing is if an offeree board issues a news release in respect of a proposed or commenced take-over bid stating a deposit period for the bid of not less than 35 days that is acceptable to the offeree board. In this circumstance, the bid regime would provide that the minimum deposit period for the subject bid must be at least the number of days from the date of the bid as stated in the news release, instead of 120 days from the date of the bid. The purpose of this exception is to accommodate a shorter deposit period in cases where a longer bid period is not necessary for the offeree board to respond to the bid.

However, in order to prevent discriminatory and unequal treatment of competing bids under the bid regime, if an offeree board issues a news release stating an acceptable shorter deposit period for one bid, then all other outstanding or subsequent take-over bids, including any unsolicited bids, would also become subject to the stated shorter minimum deposit period rather than the minimum 120 day deposit period. In any event, no bid could be open for less than 35 days.

The second exception we are proposing is if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an “alternative transaction” (being, generally, a plan of arrangement or similar change of control transaction to be approved by security holders of the issuer). In such case, the minimum deposit period for any then-outstanding take-over bid or subsequent take-over bid commenced before the completion of the alternative transaction must be at least 35 days, rather than 120 days, from the date of the bid. The purpose of this exception is to avoid unequal treatment of offerors when a board-supported change of control transaction is proposed to be effected through an “alternative transaction” rather than by way of a “friendly” take-over bid. As well, since the purpose of the 120 day minimum deposit period is to provide offeree boards with a longer period of time to respond to an unsolicited bid, there is no need for the 120 day minimum deposit period to apply where the offeree issuer has determined that an alternative transaction is appropriate.

Where an offeror reduces the initial deposit period in connection with a deposit period news release or an alternative transaction, the bid would have to remain open for at least 10 days after the date of any notice of variation concerning the reduction of the deposit period.

The 120 Day Requirement does not apply to issuer bids; the minimum deposit period for issuer bids remains 35 days.

BACKGROUND

Prior proposals

On March 14, 2013, the CSA published for comment proposed National Instrument 62-105 *Security Holder Rights Plans* and proposed Companion Policy 62-105CP *Security Holder Rights Plans* (together, the **CSA Proposal**). The Autorité des marchés financiers (the **AMF**), while participating in the publication for comment of the CSA Proposal, concurrently published a consultation paper entitled *An Alternative Approach to Securities Regulators’ Intervention in Defensive Tactics* (the **AMF Proposal**).

The CSA Proposal and the AMF Proposal sought to address, in different ways, concerns raised with respect to the CSA’s current approach to reviewing defensive tactics adopted by offeree boards in response to, or in anticipation of, unsolicited or “hostile” take-over bids.

CSA Proposal

The purpose of the CSA Proposal was to create a framework for the regulation of Rights Plans adopted by offeree boards in response to, or in anticipation of, unsolicited bids. The CSA Proposal would have allowed an offeree board to maintain a Rights Plan in the face of an unsolicited bid if a majority of the equity or voting securities of the

offeree issuer (excluding the securities of the unsolicited offeror and its joint actors) were voted in favour of the Rights Plan, either in the face of the unsolicited bid or at the offeree issuer's previous annual meeting.

AMF Proposal

While the CSA Proposal addressed the use of Rights Plans by offeree boards, the AMF Proposal raised more fundamental issues regarding the regulation of defensive tactics in Canada, including the role of offeree boards when faced with unsolicited take-over bids. The AMF Proposal, as described, sought to remedy the structural imbalance between offerors and offeree boards and update the policy framework of the take-over bid regime to reflect the current legal and economic environment and market practices regarding unsolicited take-over bids.

The AMF Proposal put forward two changes to address concerns with the existing regulatory approach to defensive tactics. First, it suggested replacing National Policy 62-202 *Take-Over Bids - Defensive Tactics* (NP 62-202) with a new policy that would recognize the fiduciary duty of the offeree board to the offeree issuer when responding to an unsolicited bid. The new policy would have limited the intervention of securities regulators to circumstances where security holders were deprived of the opportunity to consider a *bona fide* offer because the offeree board failed to adequately manage its conflicts of interest, and to circumstances that demonstrated an abuse of security holders' rights or that negatively impacted the efficiency of the capital markets.

Second, the AMF Proposal proposed to amend the take-over bid regime to require a minimum tender condition of more than 50% of all outstanding offeree issuer securities owned or held by persons other than the offeror and its joint actors, along with a mandatory 10 day extension of the bid following an announcement that the minimum tender condition had been met to give the remaining security holders the opportunity to tender to the bid.

Public comments on proposals

The comment periods for the CSA Proposal and the AMF Proposal ended on July 12, 2013. We received 72 comment letters from various market participants, including issuers, institutional investors, industry associations and law firms that reflected a broad diversity of opinions on the two proposals. Many commenters provided helpful substantive submissions, information and alternative considerations. We wish to thank all of the commenters for their contributions.

General summaries of comments received in respect of the CSA Proposal and AMF Proposal are set out, respectively, at Annex A.1 and Annex A.2 of this Notice.

Proposed Bid Amendments

On September 11, 2014, we published CSA Notice 62-306 *Update on Proposed National Instrument 62-105 Security Holder Rights Plans and AMF Consultation Paper An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* (the **Update Notice**).

As indicated in the Update Notice, in light of the comments received on the CSA Proposal and AMF Proposal, and following further reflection and analysis, the CSA decided to propose specific amendments to the bid regime as an alternative harmonized policy approach for the regulation of take-over bids. At this time, the CSA are not contemplating any changes to the current take-over bid exemptions or NP 62-202.

SUMMARY AND EXPLANATION OF THE PROPOSED BID AMENDMENTS

The Proposed Bid Amendments introduce important new requirements for take-over bids and alter the procedural framework for the conduct of take-over bids. The following is an explanation of the current bid regime and Proposed Bid Amendments as they relate to these topics:

1. Deposit Periods
2. Minimum Tender Requirement
3. 120 Day Requirement

4. Variations to a Bid
5. Changes in Information for a Bid
6. Take Up and Payment
7. Withdrawal Rights

In preparing the Proposed Bid Amendments, we have endeavored to preserve the existing structure of Part 2 of MI 62-104, which includes combined provisions for both issuer bids and take-over bids, to the greatest extent possible.

Unless otherwise specified, all references to sections in this part are to sections of MI 62-104 and the Proposed Bid Amendments.

1. Deposit Periods

(a) Current Bid Regime

Currently, the take-over bid regime mandates a deposit period of at least 35 days from the date of the bid and requires an extension of the deposit period in circumstances where there is a variation in the terms of the bid, subject to limited exceptions. Outside of these parameters, an offeror can elect to extend its bid as it deems necessary or desirable as long as it complies with the take up and payment provisions of the bid regime for any extension that occurs after all of the terms and conditions of the bid have been complied with or waived.

(b) Proposed Bid Amendments

As a consequence of the Proposed Bid Amendments, there will be three distinct deposit periods for a take-over bid: (i) an initial deposit period; (ii) a mandatory 10 day extension period if certain conditions are met; and (iii) any further deposit period(s) where the offeror voluntarily extends its bid after the expiry of the mandatory 10 day extension period.

(i) Initial deposit period

The initial deposit period is the period during which securities may be deposited under a take-over bid excluding the mandatory 10 day extension period or any extension period thereafter. This initial deposit period includes any extension by the offeror that may be necessary to permit satisfaction of the Minimum Tender Requirement or any other condition of the bid prior to the mandatory 10 day extension period. At a minimum, the initial deposit period must satisfy the 120 Day Requirement. The Proposed Bid Amendments provide that an offeror cannot take up securities deposited under its bid until the 120 Day Requirement is satisfied, all terms and conditions of the bid have been complied with or waived, and the Minimum Tender Requirement is satisfied. If a bid does not meet these three requirements at the expiry date of the bid fixed by the offeror, then the offeror would not be permitted to take up securities deposited under the bid and would have to determine whether it wishes to either (further) extend the initial deposit period or abandon its bid.

(ii) Mandatory 10 day extension period

The 10 Day Extension Requirement applies to a take-over bid if, at the expiry of the initial deposit period, the 120 Day Requirement is satisfied, all terms and conditions of the bid have been complied with or waived, and the Minimum Tender Requirement is satisfied. Once these requirements are met, an offeror must immediately take up all securities tendered to the bid (subject to a limited exception for partial take-over bids). The Proposed Bid Amendments require that the offeror issue and file a news release, with specified information, concurrent with the commencement of the mandatory 10 day extension period.

The 10 Day Extension Requirement is a standard feature of “permitted bid” Rights Plans¹ and a significant number of commenters supported the 10 Day Extension Requirement (as set out in the AMF Proposal).

¹ In general, a “permitted bid” Rights Plan includes conditions that allow a take-over bid to be made to offeree issuer security holders without triggering the Rights Plan if: (i) the offeror keeps the take-over bid open for a minimum period of time (usually 60 days); (ii) the offeror is not

(iii) Subsequent extension period and restrictions on extension

The Proposed Bid Amendments allow a take-over bid that is not a partial take-over bid to be further extended after the expiry of the mandatory 10 day extension period.

Under the Proposed Bid Amendments, a partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period. As a partial take-over bid is for a fixed number of securities and a pro-ration requirement applies, the offeror will have effectively achieved its desired minimum number of tenders before the commencement of the mandatory 10 day extension period and the number of securities ultimately taken up by the offeror will not increase as a result of tenders during the mandatory 10 day extension period. Also, under the Proposed Bid Amendments, in order to accommodate the required 10 day extension, an offeror making a partial take-over bid is permitted to defer take up and payment in respect of a portion of the tendered securities until the end of the mandatory 10 day extension period when the pro-ration factor can be properly calculated. Any further extension to a partial take-over bid after the expiry of the mandatory 10 day extension period would be unnecessary.

2. Minimum Tender Requirement

(a) Current Bid Regime

The current take-over bid regime does not impose a Minimum Tender Requirement for a take-over bid. An offeror may elect to make its bid conditional upon the receipt of a specified percentage of deposited securities; however any such condition can be waived at the discretion of the offeror. An offeree issuer may, independent of any take-over bid regime requirement, adopt a “permitted bid” Rights Plan that would require that a “permitted bid” have a minimum 50% tender condition.

(b) Proposed Bid Amendments

The Minimum Tender Requirement applies to all take-over bids and an offeror is prohibited from taking up any securities deposited under its bid unless, among other things, the Minimum Tender Requirement is satisfied.

The proposed Minimum Tender Requirement prohibits an offeror from taking up securities under a bid unless the bid receives tenders of more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror.

The following examples show how this requirement would apply in different scenarios. References to the “offeror” in the table below include the offeror and any joint actors.

Type of Take-Over Bid	Percentage of Issued and Outstanding Offeree Issuer Securities Owned by Offeror (as at Date of the Bid)	Tenders Required under the Minimum Tender Requirement
Take-over bid for all issued and outstanding offeree issuer securities (e.g. 1,000,000 securities)	0%	50% + 1 of all issued and outstanding offeree issuer securities (or 500,001 securities)
Take-over bid for all issued and outstanding offeree issuer securities (e.g. 1,000,000 securities)	40% (or 400,000 securities)	50% + 1 of the remaining 60% of issued and outstanding offeree issuer securities not owned by the offeror (or 300,001 securities)

entitled to acquire securities under the take-over bid unless a majority of securities owned by persons other than the offeror are tendered; and (iii) the offeror is obligated to extend the bid for an additional 10 days following the offeror’s initial take up under the take-over bid.

Type of Take-Over Bid	Percentage of Issued and Outstanding Offeree Issuer Securities Owned by Offeror (as at Date of the Bid)	Tenders Required under the Minimum Tender Requirement
securities)		securities)
Partial take-over bid for 25% of all issued and outstanding offeree issuer securities (e.g. 250,000 of outstanding 1,000,000 securities)	0%	50% + 1 of all issued and outstanding offeree issuer securities (or 500,001 securities) Offeror will take up the desired 25% issued and outstanding offeree issuer securities <i>pro rata</i> from all tendered securities (or 250,000 securities)
Partial take-over bid for 25% of all issued and outstanding offeree issuer securities (e.g. 250,000 of outstanding 1,000,000 securities)	10% (or 100,000 securities)	50% + 1 of the remaining 90% of issued and outstanding offeree issuer securities not owned by the offeror (or 450,001 securities) Offeror will take up the desired 25% issued and outstanding offeree issuer securities not owned by the offeror <i>pro rata</i> from all tendered securities (or 250,000 securities)

The Minimum Tender Requirement does not preclude an offeror from establishing a higher minimum tender condition for its bid or waiving such higher minimum tender condition. However, an offeror is prohibited from taking up securities deposited under the bid until the Minimum Tender Requirement and 120 Day Requirement have been satisfied and all terms and conditions of the bid have been complied with or waived.

The Minimum Tender Requirement was put forward in the AMF Proposal and supported by many commenters. The effect of the Minimum Tender Requirement is comparable to the majority security holder approval requirement for Rights Plans that was proposed under the CSA Proposal. We also note that a Minimum Tender Requirement is a standard feature of a “permitted bid” under the terms of a “permitted bid” Rights Plan.

3. 120 Day Requirement

(a) Current Bid Regime

Under the current bid regime, an offeror must allow securities to be deposited under its bid for at least 35 days from the date of the bid (s. 2.28) and an offeror must not take up securities deposited under a bid until the expiration of that period (s. 2.29). An offeror complies with these requirements by having its bid expire not earlier than 35 days following the date of the bid.

The current bid regime’s minimum 35 day deposit period provides all offeree issuer security holders with that period of time in which to receive disclosure regarding, assess the merits of, and ultimately decide whether to tender to, a take-over bid. As long as an offeree issuer security holder deposits its securities within this 35 day period and all conditions to the bid are complied with or waived, then the offeror is obligated to acquire all of the security holder’s deposited securities (subject to pro-ration in the case of a partial take-over bid) (s. 2.32).

(b) Proposed Bid Amendments

Under the Proposed Bid Amendments, take-over bids will have a minimum 120 day deposit period (s. 2.28.1), subject to the exceptions described below.

We note that several commenters in connection with their consideration of the CSA Proposal, AMF Proposal, or both, supported a longer minimum deposit period of 90 or 120 days.

(i) Shortened minimum deposit period – deposit period news release

Under the Proposed Bid Amendments, the offeree board has an option to initiate a reduction of the minimum deposit period from a minimum of 120 days to a minimum of 35 days. This may be desirable for an offeree board because otherwise, for example, a board-supported change of control transaction structured as a take-over bid would be less expeditious than an alternative structure such as a plan of arrangement effected under corporate law if a firm 120 day minimum deposit period applied.

Under the Proposed Bid Amendments, the minimum deposit period of a take-over bid can be shortened if an offeree issuer issues a deposit period news release in respect of the bid that states an initial deposit period of not more than 120 and not less than 35 days that is acceptable to the offeree board (s. 2.28.2(1)). The stated shorter deposit period in the news release would be expressed as a number of days from the date of the bid (e.g. 35 days, 60 days, 90 days, etc.) rather than with reference to an actual date (e.g. July 1, 2015). A deposit period news release is a news release in respect of a proposed or commenced take-over bid. Any purported deposit period news release in respect of a possible future bid would not have the effect of shortening the minimum deposit period for any take-over bid. We have proposed changes to NP 62-203 to provide guidance on deposit period news releases (sections 2.11 and 2.12).

The Proposed Bid Amendments expressly provide that, despite the application of a shorter deposit period for a bid as a result of the issuance of a deposit period news release, an offeror must not allow securities to be deposited under its bid for an initial deposit period of less than 35 days from the date of the bid (s. 2.28.2(3)). We think this limitation is appropriate because a period of 35 days provides all offeree issuer security holders with an equal and sufficient period of time in which to obtain disclosure regarding, assess the merits of, and ultimately decide whether to tender to, a take-over bid.

Where a deposit period news release is issued in respect of a bid, the offeror can avail itself of the shortened minimum deposit period permitted under the regime by reflecting the earlier expiry date in its bid documents (if the bid is announced at the same time as or after the deposit period news release is issued) or by way of a notice of variation (if the bid was commenced prior to the issuance of the deposit period news release) (s. 2.12(1)). We have proposed changes to NP 62-203 to provide guidance on shortened deposit periods, including in the additional circumstances described below (section 2.10).

(ii) Shortened minimum deposit period – application to other bids

While the Proposed Bid Amendments are intended to provide more time for offeree boards to respond to an unsolicited take-over bid and accommodate the expeditious completion of a “friendly” bid, they are not intended to result in discriminatory treatment among competing offerors. As such, the Proposed Bid Amendments provide that if an offeree board issues a deposit period news release stating an acceptable shorter deposit period for one bid, then all other outstanding or subsequent take-over bids, including any unsolicited bids, would also be entitled to the stated shorter minimum deposit period rather than the minimum 120 day deposit period (s. 2.28.2(2)). The rationale for this mechanism is similar to the rationale that underlies the “waive for one, waive for all” provision present in the majority of “permitted bid” Rights Plans.

A competing offeror with an outstanding bid at the time the deposit period news release is issued in respect of another bid must vary its bid if it intends to avail itself of the shorter deposit period (s. 2.12(1)). An offeror that commences a take-over bid subsequent to the issuance of a deposit period news release in respect of another bid could adopt the stated shorter minimum deposit period, provided that the bid was commenced prior to the expiry of the bid that was the subject of the deposit period news release or any other take-over bid that had been commenced

at the time the deposit period news release was issued (s. 2.28.2(2)(b)). The purpose of this limitation on the application of a shortened deposit period for future take-over bids is to make clear that the shortened deposit period applies only to contemporaneous bids.

The following examples demonstrate how the minimum deposit period provisions would apply in different scenarios.

Issuance of Deposit Period News Release	Bid Scenario / Shorter Deposit Period	Result
Deposit period news release issued in respect of proposed Bid A	Deposit period news release states a minimum deposit period of 35 days in respect of Bid A	Bid A subject to minimum deposit period of 35 days from the date of the bid
Deposit period news release issued in respect of previously commenced Bid A	<p>Deposit period news release states a minimum deposit period of 35 days in respect of Bid A</p> <p>Bid B also commenced prior to issuance of deposit period news release in respect of Bid A</p>	<p>Bid A and Bid B both subject to minimum deposit period of 35 days from the date of each respective bid</p> <p>Offerors A and B may vary bids to expire at least 35 days from date of their respective bid (provided that the bid must not expire before 10 days from the date of variation)</p>
Deposit period news release issued in respect of previously commenced Bid A	<p>Deposit period news release states a minimum deposit period of 35 days in respect of Bid A</p> <p>Bid C commenced subsequent to issuance of deposit period news release in respect of Bid A, but before expiry of Bid A</p>	<p>Bid A and Bid C both subject to minimum deposit period of 35 days from the date of each respective bid</p> <p>Offeror A may vary its bid to expire at least 35 days from date of its bid (provided that the bid must not expire before 10 days from the date of variation)</p> <p>Bid C subject to minimum deposit period of 35 days from the date of its bid</p>

(iii) Shortened minimum deposit period – alternative transaction

In addition to deposit period provisions that afford equal treatment of competing offerors, we believe that an offeror should not be disadvantaged vis-à-vis another potential acquiror solely on the basis of the structure of the change of control transaction (e.g. take-over bid as opposed to a plan of arrangement). Accordingly, the Proposed Bid Amendments provide that, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an “alternative transaction”, then the minimum deposit period for any then-outstanding take-over bid or subsequent take-over bid (commenced before the completion or the abandonment of the alternative transaction or expiry of any other outstanding take-over bid) must be at least 35 days, rather than 120 days, from the date of the bid (s. 2.28.3). We do not think that an offeree board that has already agreed to an alternative transaction

needs the additional time between 35 to 120 days to consider and respond to a competing take-over bid. The effect of maintaining the 120 day deposit period would be to unduly prejudice existing offerors or those contemplating a bid after the alternative transaction is announced.

We propose a concept of “alternative transaction” principally based on the definition of “business combination” currently found in MI 61-101. The definition of “alternative transaction” has been drafted with a view to capturing other types of change of control transactions that could be agreed to or initiated by the issuer. As well, we propose that the definition encompass, based upon language found in business corporation legislation, a sale, lease or exchange of property by an issuer that requires approval by way of a special resolution. We have proposed changes to NP 62-203 to provide guidance on alternative transactions (sections 2.13 and 2.14).

The following examples demonstrate how the minimum deposit period provisions would apply in different scenarios involving an “alternative transaction”.

Timing of Announcement of Alternative Transaction	Result
Announcement of alternative transaction in respect of offeree issuer subsequent to commencement of Bid A	<p>Bid A subject to minimum deposit period of 35 days from the date of its bid</p> <p>Offeror A may vary bid to expire at least 35 days from date of its bid (provided that the bid must not expire before 10 days from the date of variation)</p>
<p>Announcement of alternative transaction in respect of offeree issuer prior to commencement of Bid B</p> <p>Bid B commenced before completion or abandonment of alternative transaction</p>	Bid B subject to minimum deposit period of 35 days from the date of its bid

(iv) Scope and duration of shortened minimum deposit period

The 120 Day Requirement is, effectively, restored for any new bids commenced after all of the bids to which sections 2.28.2 and 2.28.3 apply have expired and any applicable alternative transaction has been completed or abandoned.

4. Variations to a Bid

(a) Current Bid Regime

Currently, if an offeror varies its take-over bid it must issue and file a news release and send a notice of variation to all security holders subject to the bid whose securities were not taken up before the date of variation (s. 2.12(1)). If there is a variation, the period during which securities may be deposited under the bid must not expire before 10 days after the date of the notice of variation (s. 2.12(3)). An exception to these requirements exists for a variation consisting solely of a waiver of a condition in the bid where the consideration offered for the securities consists solely of cash (s. 2.12(4)).

The current bid regime also prohibits variations to a bid after expiry of the period during which securities can be deposited under a bid, except for a waiver of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror (s. 2.12(5)).

(b) Proposed Bid Amendments

We are proposing two changes to the variation provisions in the bid regime as a result of the Proposed Bid Amendments.

(i) Reduction or extension of deposit period is a variation to the bid

First, we are adding language confirming that any reduction to the period during which securities may be deposited to a bid pursuant to section 2.28.2 or section 2.28.3 constitutes a variation requiring the offeror to issue and file a news release and send a notice of variation (s. 2.12(1)). This would apply where an offeror shortens its initial deposit period following the issuance of a deposit period news release or as a result of the offeree issuer announcing an “alternative transaction”. If an offeror varies its bid to shorten the deposit period, subsection 2.12(3) requires that the bid must not expire before 10 days after the date of the offeror’s corresponding notice of variation, which means that the period during which securities may be deposited under the bid may have to be extended.

We note that currently subsection 2.12(1) expressly states that a variation to a bid includes an extension of the period during which securities may be deposited to the bid. As a result, that provision would apply to the mandatory 10 day extension period required under paragraph 2.31.1(a), or any other permissible extension, such that the offeror would be required to issue and file a news release and send a notice of variation in connection with any such extension.

(ii) Prohibition on Certain Variations after Bid Pre-Conditions Achieved

The second change we are proposing to the variation provisions of the bid regime is an express restriction on variations in the terms of a take-over bid after the offeror becomes obligated to take up securities (s. 2.12(6)). Under the Proposed Bid Amendments, an offeror must immediately take up securities deposited under its bid if, at the expiry of the initial deposit period, the 120 Day Requirement and Minimum Tender Requirement are satisfied and all terms and conditions of the bid have been complied with or waived (s. 2.32.1(1)).

The purpose of the general restriction on variations after these requirements are satisfied is to preclude possible prejudice to security holders whose deposited securities were taken up prior to the variation. We are, however, proposing exceptions to this restriction for (i) a variation to extend the time during which securities may be deposited under the bid, or (ii) a variation to increase the consideration offered for securities subject to the bid.

5. Changes in Information for a Bid

(a) Current Bid Regime

The bid regime sets out requirements where there is a change in the information contained in a bid circular, a notice of change or a notice of variation that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid (s. 2.11). In that circumstance, an offeror must promptly issue and file a news release and send a notice of change to every security holder to whom the bid was required to be sent and whose securities were not taken up before the date of the change. The purpose of this requirement is to ensure that security holders who have yet to deposit securities to the bid, or those whose deposited securities have not yet been taken up, can consider whether the new information impacts their tender decision. As well, a security holder is entitled to withdraw securities deposited to a bid during the 10 day period after the date of a notice of change provided that the securities were not already taken up by the offeror before the date of the notice of change (s. 2.30).

(b) Proposed Bid Amendments

We are proposing to introduce a new provision concerning changes in information whereby, if an offeror is required to send a notice of change prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change, which means that the initial deposit period may have to be extended (s. 2.11(5)). The purpose of this restriction is to ensure that all withdrawal rights associated with a notice of change have lapsed before an offeror can take up deposited securities at the expiry of the initial deposit period (assuming that, otherwise, the 120 Day Requirement has been satisfied, all terms and conditions of the bid have been

complied with or waived, and the Minimum Tender Requirement has been satisfied). We have also proposed changes to NP 62-203 to provide further guidance on changes in information (section 2.15 in Annex D).

We believe this extension requirement is appropriate because it ensures that the Minimum Tender Requirement is achieved in circumstances where offeree issuer security holders have had adequate time to consider the information in a notice of change. We also think that security holders who have an opportunity to deposit securities to a bid during the mandatory 10 day extension period, after a bid has already succeeded in meeting the Minimum Tender Requirement and all other conditions to the bid, should make their tender decisions with assurance that the bid cannot fail as a result of withdrawal rights being exercised and the Minimum Tender Requirement no longer being met.

6. Take Up and Payment

(a) Current Bid Regime

The purpose of the take up and payment provisions of the bid regime is to provide an equitable framework for the timely take up and payment of securities deposited to a bid.

The current bid regime provides that if all terms and conditions of a take-over bid have been complied with or waived, the offeror must take up and pay for securities deposited under the bid not later than 10 days after the expiry of the bid (or possibly earlier in certain cases) (s. 2.32(1)). The offeror cannot take up deposited securities until the expiration of 35 days from the date of the bid. An offeror is specifically required to pay for any securities taken up as soon as possible, and in any event, not later than 3 business days after take up (s. 2.32(2)). An offeror is further obligated to take up and pay for securities deposited subsequent to the date on which it first took up securities deposited under the bid no later than 10 days after the deposit of those securities (s. 2.32(3)). In addition, an offeror is prohibited from extending its take-over bid if all the terms and conditions have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn (s. 2.32(4)).

The current take-over bid regime includes exceptions to the take up and payment provisions for partial take-over bids. Section 2.26 provides that, if a greater number of securities are deposited to a partial take-over bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately according to the number of securities deposited by each security holder. This *pro rata* requirement is intended to ensure that all depositing security holders to a partial take-over bid are treated equally, rather than permitting an offeror to take up its desired number of offeree issuer securities on a first-come-first-served basis or arbitrarily from the pool of deposited securities. To permit *pro rata* treatment of security holders, an offeror is only required to take up, by the specified times, the maximum number of securities that the offeror can take up without contravening the *pro rata* requirement at the expiry of the bid (s. 2.32(5)).

(b) Proposed Bid Amendments

(i) Prohibition on take up of deposited securities until conditions satisfied

Under the Proposed Bid Amendments (s. 2.29.1), an offeror is prohibited from taking up securities deposited under its bid unless

- (a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,
- (b) all terms and conditions of the bid have been complied with or waived, and
- (c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

(ii) Obligation to take up and pay for deposited securities

We propose that if at the expiry of the initial deposit period, (i) the 120 Day Requirement is satisfied, (ii) all terms and conditions of the bid have been complied with or waived, and (iii) the Minimum Tender Requirement is satisfied, the offeror must immediately take up securities deposited under the bid (s. 2.32.1(1)). As discussed below, an exception to this general obligation is available for partial take-over bids.

(iii) General take up and payment provisions

As is the case under the current bid regime, the Proposed Bid Amendments require that an offeror must pay for securities taken up as soon as possible, and in any event, not later than 3 business days after the securities deposited under the bid are taken up (s. 2.32.1(2)).

Securities deposited to a take-over bid (other than a partial take-over bid) during the mandatory 10 day extension period or a subsequent extension period must be taken up and paid for by the offeror no later than 10 days after the deposit of securities (s. 2.32.1(3)). For a take-over bid that is not a partial take-over bid, an offeror is also prohibited from extending its bid at any time after the expiry of the mandatory 10 day extension period unless it has first taken up all securities deposited to the bid (s. 2.32.1(4)).

(iv) Partial Take-Over Bids

As is the case under the current bid regime, an offeror that has made a partial take-over bid is required to take up securities tendered on a *pro rata* basis where a greater number of securities are deposited under the bid than the offeror is bound or willing to acquire. The Proposed Bid Amendments exempt an offeror making a partial take-over bid from the general obligation to immediately take up all deposited securities if, at the expiry of the initial deposit period, the specified bid conditions in section 2.32.1(1) are satisfied; instead, the offeror is only required to take up at that time the maximum number of securities that it can without contravening the *pro rata* requirement (s. 2.32.1(6)). The Proposed Bid Amendments further provide that an offeror making a partial take-over bid must take up any securities deposited during the initial deposit period and not already taken up by it in reliance on subsection 2.32.1(6), and securities deposited during the mandatory 10 day extension period, on a *pro rata* basis and not later than one day after the expiry of the mandatory 10 day extension period (s. 2.32.1(7)). Partial take-over bids cannot be extended beyond the expiry of the mandatory 10 day extension period.

7. Withdrawal Rights

(a) Current Bid Regime

The take-over bid regime provides that a security holder can withdraw securities deposited by it under a take-over bid (a) at any time before those securities have been taken up by the offeror, (b) at any time before the expiration of 10 days from the date of a notice of change or a notice of variation (subject to exceptions), or (c) if the securities have not been paid for by the offeror within 3 business days after the securities were taken up (s. 2.30(1)).

(b) Proposed Bid Amendments

(i) Suspension of withdrawal rights for partial take-over bids

The Proposed Bid Amendments include new restrictions on the availability of withdrawal rights in respect of partial take-over bids.

Securities deposited under a partial take-over bid must be taken up on a *pro rata* basis by the offeror. Under the Proposed Bid Amendments, an offeror would not be able to determine the exact number of securities that it could take up *pro rata* from each depositing security holder at the expiry of the initial deposit period because it may receive additional deposits of securities during the mandatory 10 day extension period. An offeror making a partial take-over bid is obliged to determine the portion of securities deposited under the bid at the expiry of the initial deposit period that it is required to take up without contravening the *pro rata* requirement (ss. 2.32.1(1) and (6)). However, an offeror making a partial take-over bid will have to defer take up of at least some number of deposited securities until the end of the mandatory 10 day extension period when the pro-ration factor can be finally determined. As a consequence, a number of securities deposited to a successful partial take-over bid that has met the

Minimum Tender Requirement and all other conditions to the bid under subsection 2.32.1(1) would remain subject to rights of withdrawal for lack of take up and/or in respect of a notice of change issued after the expiry of the initial deposit period but before the deposited securities are taken up upon expiry of the mandatory 10 day extension period. We do not think this outcome would be consistent with the framework of the Proposed Bid Amendments which impose a mandatory extension period for a partial take-over bid when an offeror would otherwise be in a position to take up securities and complete its offer.

We propose to suspend or remove a depositing security holder's withdrawal rights in respect of securities deposited under a partial take-over bid before the expiry of the initial deposit period but not taken up by the offeror at the expiry of the initial deposit period in reliance on the exception for pro-rata in subsection 2.32.1(6). The suspension of withdrawal rights for lack of take up of these securities and removal of withdrawal rights for these securities in respect of a notice of change or notice of variation after the expiry of the initial deposit period are set out in new provisions in subsections 2.30(1.1) and 2.30(2)(a.1). We believe these provisions are appropriate because the offeror's delay in taking up deposited securities is necessitated by its obligation to comply with the *pro rata* requirement and a depositing security holder is otherwise assured that, in any event, the partial take-over bid will be completed in a timely manner once the mandatory 10 day deposit period has expired. As noted in the "Changes in Information for a Bid" section above, we also think that security holders who have an opportunity to deposit securities to a bid during the mandatory 10 day extension period, after a bid has already succeeded in meeting the Minimum Tender Requirement and all other conditions to the bid, should make their tender decisions with assurance that the bid cannot fail as a result of withdrawal rights being exercised and the Minimum Tender Requirement no longer being met.

(ii) Removal of withdrawal rights in respect of certain variations

The bid regime provides that a security holder can withdraw securities deposited under a take-over bid at any time before the expiration of 10 days from the date of a notice of change or a notice of variation. This particular right of withdrawal is not available if (a) the securities have already been taken up by the offeror, or (b) the variation consists either solely of an increase in consideration offered for the securities and an extension of time for deposit of securities (to not later than 10 days after the date of the notice of variation), or a waiver of one or more of the conditions of the bid where the consideration offered for offeree issuer securities consists solely of cash (s. 2.30(2)).

We propose that the right of withdrawal in respect of a notice of variation not apply to a variation in the terms of a take-over bid *subsequent to the expiry of the initial deposit period* where the variation consists of *either* (i) an increase in the consideration offered for the securities subject to the bid, *or* (ii) an extension of the time for deposit to not later than 10 days from the date of the notice of variation (s. 2.30(2)(b)(iii)). We believe that an increase of consideration or a limited extension of time for deposits after all conditions of the bid under subsection 2.32.1(1) have been satisfied (such as an extension to provide for the mandatory 10 day extension period) does not warrant the availability of a withdrawal right for security holders, particularly where the bid regime otherwise mandates timely take up and payment for deposited securities.

CONSEQUENTIAL AMENDMENTS

Unless otherwise noted below, the Consequential Amendments update section and instrument references to reflect the Proposed Harmonization.

We have proposed certain consequential changes to NP 62-103 to provide policy guidance in respect of the proposed amendments to MI 62-104.

The consequential amendments to NI 43-101 reflect the fact that, for the purposes of the technical report filing requirement in subparagraph 4.2(5)(a)(ii) of that Instrument in respect of disclosure contained in a directors' circular, the appropriate reference in that subparagraph is to the expiry of the initial deposit period, not the expiry of the bid.

The Ontario Securities Commission and the Autorité des marchés financiers are proposing to change section 4.1 of 61-101CP to clarify, for the avoidance of doubt, that it is their view that notwithstanding that Form 62-104F1 *Take-Over Bid Circular* of MI 62-104 is not specifically referenced in subsection 2.2(1)(d) of MI 61-101, the disclosure

set out in such form is required for insider bids.

ANTICIPATED IMPACT OF PROPOSED BID AMENDMENTS

The following are some expected impacts of adopting the Proposed Bid Amendments.

1. Mitigation of coercive aspects of the current tender process

- We expect that the Minimum Tender Requirement and the 10 Day Extension Requirement will address the “pressure to tender” and coercion concerns associated with the existing tender process. We believe this would ensure the legitimacy of individual security holder tender decisions.
- The possibility that an offeror would waive its minimum tender condition may lead security holders that do not support the bid to tender to the bid or risk being left holding less liquid securities of the offeree issuer. The mandatory Minimum Tender Requirement would prevent this circumstance.

2. Collective majority security holder decision-making

- The Minimum Tender Requirement would ensure that an effort to gain control of a company, or a controlling interest in a company, would succeed only with the uncoerced approval of a majority of independent security holders. Further, security holders would have additional time to assess bid information as a result of the 120 Day Requirement.
- One consequence of the Minimum Tender Requirement is that minority security holders who tender to a bid will not have their securities taken up where holders of a majority of the securities do not support the bid.

3. Increased leverage for offeree boards

- The 120 Day Requirement would provide offeree boards with more time to communicate their vision for the issuer and provide information about its value. The offeree board would also have more time to attract competing offers or seek value-maximizing strategic alternatives.
- The fact that the 120 day minimum deposit period can be shortened if an offeree board issues a news release stating an acceptable shorter deposit period may provide an incentive for offerors to negotiate with the offeree issuer.

4. Higher quality bids

- Offerors may put forward higher quality bids to win the support of a majority of independent security holders.

5. Fewer partial take-over bids

- The Proposed Bid Amendments could reduce the number of partial take-over bids because all partial take-over bids would have to satisfy the Minimum Tender Requirement to proceed.

ALTERNATIVES CONSIDERED

The CSA Proposal and the AMF Proposal, and comments thereon, were alternatives considered. The Proposed Bid Amendments are now the CSA’s preferred regulatory approach for the regulation of take-over bids.

UNPUBLISHED MATERIALS

In developing the Proposed Bid Amendments, we have not relied on any significant unpublished study, report, or

other written materials.

SUBSTANCE AND PURPOSE OF THE PROPOSED MARKET PRICE AMENDMENT

The normal course issuer bid exemption set out in paragraph 4.8(3)(c) of MI 62-104 (the **Other Published Markets Exemption**) requires that the value of the consideration paid by the issuer not be in excess of the “market price” at the date of acquisition, as determined in accordance with section 1.11 of MI 62-104. As currently drafted, section 1.11 of MI 62-104 determines “market price” with reference to an average of the closing price, highest and lowest prices, closing bid and ask prices, as applicable, over a preceding 20 business day period. Accordingly, in order to rely on the Other Published Markets Exemption, an issuer would have to acquire securities on a published market other than a designated exchange (each, an **Other Published Market**) at a price representing the applicable average of prices of the securities for the prior 20 business days, and not the current trading price. Given that securities are acquired through the trading system of the applicable Other Published Market at the prevailing market price, it is not clear how this would be possible in practice.

Subsection 1.11(3) of MI 62-104, which applies to normal course purchases made during the currency of a take-over bid, provides an alternative meaning for market price, being the price of the last standard trading unit of securities of that class purchased by a person who was not acting jointly or in concert with the offeror. The application of a “market price” requirement in respect of the Other Published Markets Exemption was first introduced in February 2008. It was the intention that such requirement mirror the requirement for exempt normal course purchases during a take-over bid. Accordingly, the Proposed Market Price Amendment amends subsection 1.11(3) of MI 62-104 so that the alternative meaning of “market price” in that subsection also applies for the purposes of the Other Published Markets Exemption.

LOCAL MATTERS

Annex M to this Notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

REQUEST FOR COMMENTS

We welcome your comments on the Proposed Bid Amendments. In addition to any general comments you may have, we also invite comments on the following specific questions:

1. The Proposed Bid Amendments contemplate the reduction of the minimum deposit period for take-over bids in the event that the offeree board issues a deposit period news release. Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to a deposit period news release and the ability of an offeror to reduce the initial deposit period for its bid as a result of the issuance of a deposit period news release?
2. The Proposed Bid Amendments provide that the minimum deposit period for an outstanding or future take-over bid for an issuer must be at least 35 days if the issuer announces that it has agreed to enter into, or determined to effect, an “alternative transaction”. The Proposed Bid Amendments include a definition of “alternative transaction” that is intended to encompass transactions generally involving the acquisition of an issuer or its business. Do you agree with the scope of the definition of “alternative transaction”? If not, please explain why you disagree with the scope and what changes to the definition you would propose.
3. Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to alternative transactions? Does the proposed policy guidance in sections 2.13 and 2.14 of NP 62-203 assist with interpretation of the alternative transaction provisions?
4. The Proposed Bid Amendments include a number of provisions that are specific to partial take-over bids. In particular, the Proposed Bid Amendments contemplate that an offeror making a partial take-over bid is only obligated to take up, at the expiry of the initial deposit period and assuming all pre-conditions to the bid are met, the maximum number of securities it can without contravening the *pro rata* take up requirement (s. 2.32.1(6)).

Then, at the expiry of the mandatory 10 day extension period, the offeror must complete the *pro rata* take up obligation in respect of securities previously deposited (but not taken up) and securities deposited during the mandatory 10 day extension period (s. 2.32.1(7)). Would policy guidance concerning the interpretation or application of the Proposed Bid Amendments as they relate to partial take-over bids be useful? If so, please explain.

5. The Proposed Bid Amendments include revisions to the take up and payment and withdrawal right provisions in the take-over bid regime. Do you agree with these proposed changes or foresee any unintended consequences as a result of these changes? In particular, do you agree that there should not be withdrawal rights for securities deposited to a partial take-over bid prior to the expiry of the initial deposit period for so long as they are not taken up until the end of the mandatory 10 day extension period?
6. Are the current time limits set out in subsections 2.17(1) and (3) sufficient to enable directors to properly evaluate an unsolicited take-over bid and formulate a meaningful recommendation to security holders with respect to such bid?
7. Do you anticipate any changes to market activity or the trading of offeree issuer securities during a take-over bid as a result of the Proposed Bid Amendments? If so, please explain.

How to provide your comments

Please provide your comments in writing by June 29, 2015. Please provide your comments in Microsoft Word format.

Please address your submissions to all members of the CSA as follows:

British Columbia Securities Commission
 Alberta Securities Commission
 Financial and Consumer Affairs Authority of Saskatchewan
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 Superintendent of Securities, Prince Edward Island
 Nova Scotia Securities Commission
 Financial and Consumer Services Commission (New Brunswick)
 Securities Commission of Newfoundland and Labrador
 Superintendent of Securities, Yukon Territory
 Superintendent of Securities, Northwest Territories
 Superintendent of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

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 Toronto, Ontario M5H 2S8
 Fax: 416-593-2318
 Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
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 Autorité des marchés financiers
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Please note that all comments received will be made publicly available and posted on the websites of certain securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain CSA jurisdictions requires publication of a summary of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published.

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Annex C	Blackline Extracts of MI 62-104 Showing Proposed Amendments
Annex D	Proposed Changes to NP 62-203
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Annex J	Proposed Amendments to MI 61-101
Annex K	Proposed Changes to 61-101CP
Annex L	Proposed Amendments to NI 62-103
Annex M	Local Matters

Questions

Please refer your questions to any of the following:

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ANNEX A.1

SUMMARY OF COMMENTS ON CSA PROPOSAL

The following is a general summary of comments received on the CSA Proposal, including comments received that relate to aspects of the Proposed Bid Amendments. The summary does not review comments on specific or technical aspects of the CSA Proposal since the CSA has determined to proceed with the Proposed Bid Amendments as an alternative to that proposal.

The CSA Proposal put forward a framework for the regulation of security holder rights plans adopted by boards of directors of offeree issuers in response to unsolicited bids. Under the proposal, an offeree board could maintain a security holder rights plan if a majority of the equity or voting securities of the offeree issuer (excluding the securities of the offeror and its joint actors) were voted in favour of such plan, either in the face of the unsolicited bid or at the offeree issuer's previous annual meeting.

1. General Comments

We invited comments on whether the CSA Proposal was preferable to the status quo.

We received comments that both supported and disagreed with the proposal.

- Many commenters said that the CSA Proposal was preferable to the status quo. They noted that the current regime has led to inconsistent decisions and the timing of the termination of a security holder rights plan by securities regulators is uncertain.
- Other commenters indicated that the CSA Proposal was not preferable to the status quo as it would discourage bids or prevent bids from going to security holders for consideration, or lead to management entrenchment at the expense of security holders. Many of these commenters felt that shareholders, as owners of a corporation, were best placed to determine what is in their best interest and should be left with the decision to tender their securities to a take-over bid.

2. Appropriate Security Holder Approval Period

The CSA Proposal did not specifically include a proposal for a minimum bid period as contemplated by the Proposed Bid Amendments. However, the CSA Proposal allowed for an approval period of 90 days for security holder rights plans and invited comments on whether the 90-day period was appropriate.

We received the following comments on that proposal:

- Some commenters suggested that a 90-day period was not long enough. They recommended that the period provided to a board of directors to obtain shareholders' approval under the CSA Proposal be increased to 120 days. In their view, the 90-day period could be insufficient to complete the due diligence required in an auction process.
- Other commenters believed that 90 days was too long. These commenters indicated that the proposed 90-day period could result in additional delays and financing costs for offerors, which, in turn, could result in fewer unsolicited take-over bids.
- Several commenters believed that a period of 90 days would ordinarily provide sufficient time for a board of directors of an offeree issuer to seek alternatives to a hostile bid, to obtain the highest reasonably available price for its securities and to assess the offer. They were of the view that a

90 day period would not have a significant effect on the willingness of hostile offerors to make bids.

3. Board Discretion

We asked in the CSA Proposal whether the discretion given to a board of directors under the proposal was appropriate. Some of the views expressed included the following:

- Many commenters agreed that, as under the CSA Proposal, shareholders should have the ultimate decision over whether to maintain a security holder rights plan. They expressed concern that boards may use security holder rights plans, even temporarily, as an entrenchment mechanism.
- Many commenters felt that, in general, the discretion given to boards of directors under the CSA Proposal was appropriate and would afford offeree boards more time to exercise their fiduciary duties. However, a few commenters were concerned that, under the CSA Proposal, a board of directors could maintain a “just say no” security holder rights plan between annual general meetings unless the shareholders requisitioned a special meeting to terminate the rights plan.
- Several commenters stated that the CSA Proposal unduly restricted the board of directors’ discretion and did not adequately empower boards of directors. In their view, allowing shareholders to ratify the board of directors’ decision to adopt a security holder rights plan by way of shareholder vote did not constitute a sufficiently “hands-off” approach.

4. Structure of Take-over Bids in Canada

We invited comments on whether the CSA Proposal would have any negative impact on the structure of take-over bids in Canada.

Most commenters agreed that the CSA Proposal would not unduly discourage or impose serious impediments to the making of unsolicited bids. They added that, in their view, the CSA Proposal would result in more negotiated bids.

Many commenters indicated that the CSA Proposal would likely lead to more proxy contests, which they anticipated would be time- and resource-consuming for the offeror and the offeree issuer.

Many commenters stated general concerns about the quality of votes obtained under the proxy system in Canada. Consequently, they believed that voting results might not accurately reflect shareholders’ views.

5. Role of Securities Regulators

We also invited comments on whether the CSA Proposal would reduce the need for securities regulators to review security holder rights plans through public interest hearings.

Some commenters agreed that the number of hearings might decrease but, in their view, the involvement of securities regulators would continue, albeit in other circumstances.

Some commenters believed that the CSA Proposal would address current concerns relating to arbitrary and inconsistent results from regulatory intervention, while others noted that it was unclear as to what circumstances might engage the public interest jurisdiction of securities regulators under the CSA Proposal.

ANNEX A.2

SUMMARY OF COMMENTS ON AMF PROPOSAL

The following is a general summary of comments received on the AMF Proposal, including comments received that relate to aspects of the Proposed Bid Amendments. The summary does not review comments on specific or technical aspects of the AMF Proposal since the CSA has determined to proceed with the Proposed Bid Amendments as an alternative to the proposal.

1. Minimum Tender Requirement and Mandatory Extension Requirement

The AMF Proposal included a proposed amendment to the take-over bid regime to require that all take-over bids receive tenders from more than 50% of all outstanding securities of the offeree issuer owned or held by persons other than the offeror (the minimum tender requirement). The AMF Proposal also proposed a mandatory 10-day extension of the bid following an announcement that the minimum tender requirement had been met.

Along with this proposal, the AMF invited comments on whether the proposed changes would (i) allow offeree security holders to make a voluntary, undistorted collective decision to sell, and (ii) promote the efficiency of capital markets.

The AMF received a number of comments on the proposed amendments in the AMF Proposal. The following is a general summary of the views expressed by commenters:

- Commenters were generally supportive of adopting these provisions.
- Many commenters were of the view that these provisions would provide security holders with the opportunity to make more informed decisions and would allow offeree security holders to make voluntary, undistorted collective decisions to sell. In their view, this would address the collective action concerns associated with our take-over bid regime and ensure fair treatment of security holders.
- Some commenters indicated that the proposed changes would alleviate the pressure on certain security holders to tender into the bid or to sell their shares in the secondary market for fear of being left in the minority. They also suggested that the proposed changes were akin to security holder approval and increased the legitimacy of the bid process. More specifically, they noted that the minimum tender requirement would act like a referendum among security holders and the 10-day extension of the bid would allow undecided shareholders to tender.
- Some commenters submitted that it is important to level the playing field for all security holders, as only larger companies tend to adopt the “permitted bid” security holder rights plan. The proposed changes reflect elements of the “permitted bid” concept under most security holder rights plans.
- Similar to the bid regime amendments in the AMF Proposal, some commenters suggested that securities regulators mandate that all security holder rights plans contain the terms of the “permitted bid” security holder rights plan, including that a waiver of a security holder rights plan with respect to one bid results in a waiver for all bids.

- Many issuers felt that there are currently regulatory imbalances that unduly favour offerors and that the bid regime amendments included in the AMF Proposal would enhance the efficiency of capital markets by reducing coercion and the pressure to which security holders are subjected.
- Some commenters expressed concern that offeree boards of directors have no real ability to protect offeree issuers from structurally coercive bids and, in particular, from bids that substantially undervalue the offeree issuer. These commenters noted that boards do not have the ability to maintain a security holder rights plan indefinitely in the face of a bid.
- A few commenters argued that the suggestion that the current take-over bid regime is too “offeror friendly” is not supported by empirical evidence. In their view, the current regime appropriately provides security holders with an unrestricted ability to accept a premium bid.

2. Board Discretion

In addition to proposing the minimum tender requirement and the 10-day mandatory extension requirement, the AMF Proposal also contemplated policy changes that would recognize the fiduciary duty of the board of directors of the offeree issuer when responding to an unsolicited bid.

The AMF invited comments on whether giving appropriate deference to directors in the exercise of their fiduciary duty would negatively impact the ability of offeree issuer security holders to tender their securities to an unsolicited take-over bid.

Several commenters were of the view that directors should have a greater ability to fulfill their fiduciary duty in response to a take-over bid.

They voiced the following views:

- The CSA should recognize that boards are constrained by their fiduciary duties and by existing shareholder rights, including rights to submit proposals and to appoint new directors, adding that a proposal that gives priority to shareholders undermines board authority under corporate law.
- The CSA should allow boards of directors the discretion to act in what they determine to be the best interest of the corporation, including the ability to “say no” to a hostile take-over bid.
- Directors can legitimately conclude that an unsolicited offer is not in the corporation’s best interests and that alternatives better aligned with the corporation’s best interests exist.

Some commenters favoured the shareholder-focused status quo. They found the AMF Proposal unacceptable for the following reasons:

- It would give directors broad discretion to adopt defensive tactics that could prevent security holders from tendering into bids.
- The AMF Proposal could tilt the balance of power too far in favour of the offeree issuer’s directors, making hostile take-over bids very difficult to carry out without replacing the offeree board.

Some commenters indicated that security holders generally had the appropriate tools to discipline boards under corporate law. They commented that the right of shareholders to elect and to remove directors,

along with their right to sue for breach of fiduciary duty or seek relief under the oppression remedy, provides a powerful check on directorial authority.

However, other commenters did not agree that security holders have the appropriate tools to discipline directors. They took the view that the tools available to security holders had largely been ineffective, as demonstrated by the difficulty pursuing a claim in courts and the fact that the exercise of the shareholders' voting rights to withhold votes does not generally lead to the removal of the director. In their view, it is difficult for minority shareholder voices to be heard given that the shareholder base of many Canadian companies is quite concentrated.

3. Role of securities regulators

Law firms and issuers generally indicated that courts would be an appropriate forum to address disputes regarding defensive tactics, as it is the case in the U.S.

Institutional investors generally expressed concerns with a decreased role for securities regulators, particularly under the AMF Proposal. They commented that securities regulators have a specific mandate, not shared by the courts, to protect the interests of investors; they did not wish to see that mandate or involvement weakened.

ANNEX B

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS

1. *Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.*
2. *The title of the Instrument is replaced with “National Instrument 62-104 Take-Over Bids and Issuer Bids”.*
3. *Section 1.1 is amended*

(a) by adding the following definition:

“alternative transaction” means, for an issuer:

- (a) an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder’s consent, regardless of whether the equity security is replaced with another security, but does not include
 - (i) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,
 - (ii) a termination of a holder’s interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership, or
 - (iii) a transaction between the issuer and a subsidiary of the issuer,
- (b) a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer, or
- (c) a sale, lease or exchange of all or substantially all the property of the issuer other than in the ordinary course of business of the issuer; ,

(b) by adding “or” at the end of paragraph (c) of the definition of “associate”, and

(c) by adding the following definitions in alphabetical order:

“deposit period news release” means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 120 days and not less than 35

days that is acceptable to the board of directors of the offeree issuer, expressed as a number of days from the date of the bid;

“initial deposit period” means the period, including any extension, during which securities may be deposited under a take-over bid but does not include a mandatory 10 day extension period or any extension period subsequent to a mandatory 10 day extension period;

“mandatory 10 day extension period” means the 10 day period referred to in paragraph 2.31.1(a);

“partial take-over bid” means a take-over bid for less than all of the class of securities subject to the bid; .

4. Subsection 1.11(3) is amended by adding “and subsection 4.8(3)” after “section 4.1”.

5. Section 2.11 is amended by adding the following subsections:

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder to whom paragraph 2.30(2)(a.1) applies.

(5) If an offeror is required to send a notice of change pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change. .

6. Section 2.12 is amended

(a) in subsection (1) by adding “reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or” before “extension”,

(b) by adding the following subsections:

(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder to whom paragraph 2.30(2)(a.1) applies.

(3.1) If an offeror is required to send a notice of variation pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of variation. ,

(c) in subsection (4) by replacing “and (3)” with “, (3) and (3.1)”, and adding “, other than an extension in respect of the mandatory 10 day extension period,” before “resulting”,

(d) in subsection (5) by deleting “a take-over bid or”, and

(e) by adding the following subsection:

(6) A variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, must not be made after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1. .

7. **Subsection 2.17(3) is amended by replacing** “period during which securities may be deposited under the bid” **with** “initial deposit period”.

8. **Section 2.26 is amended**

(a) **in subsection (1) by deleting** “a take-over bid or”, **and**

(b) **by repealing subsection (4).**

9. **The Instrument is amended by adding the following section:**

Proportionate take up and payment – partial take-over bids

2.26.1(1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction. .

10. **Section 2.28 is amended**

(a) **by deleting** “a take-over bid or”, **and**

(b) **by adding** “a minimum deposit period of” **before** “at least”.

11. **The Instrument is amended by adding the following sections:**

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 120 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror’s take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

(a) the offeror, prior to the issuance of the deposit period news release referred to in subsection (1), has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;

- (b) the offeror, subsequent to the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:
 - (i) the date of expiry of the take-over bid referred to in subsection (1),
 - (ii) the date of expiry of a take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an alternative transaction, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

- (a) the offeror, prior to the issuance of the news release, has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;
- (b) the offeror, subsequent to the issuance of the news release, commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:
 - (i) the date of completion or abandonment of the alternative transaction,
 - (ii) the date of expiry of a take-over referred to in paragraph (a).

12. Section 2.29 is amended by deleting “a take-over bid or”.

13. The Instrument is amended by adding the following section:

Prohibition on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following conditions are satisfied:

- (a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,
- (b) all terms and conditions of the bid have been complied with or waived,
- (c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn. .

14. Section 2.30 is amended

(a) by adding the following subsection:

- (1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder may not withdraw securities that have been deposited under the bid before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection 2.32.1(6) during the period
 - (a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and
 - (b) ending at the time the offeror becomes obligated to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6) under subsection 2.32.1(7) or (8), as applicable. ,
- (b) *in subsection (2) by replacing* “The right of withdrawal under paragraph (1)(b) does not apply” *with* “Despite paragraph (1)(b), a security holder may not withdraw securities that have been deposited under the take-over bid or issuer bid”,
- (c) *by adding the following paragraph:*
 - (a.1) in the case of a partial take-over bid, the securities were deposited under the bid before the expiry of the initial deposit period and were not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or ,
- (d) *in paragraph (2)(b) by replacing* “one or both” *with* “any”,
- (e) *in subparagraph (2)(b)(i) by replacing* “the bid” *with* “a take-over bid or issuer bid”,
- (f) *in subparagraph (2)(b)(ii) by replacing* “the bid” *with* “a take-over bid or issuer bid”, *and by adding* “;” *at the end of the subparagraph, and*
- (g) *in paragraph (2)(b) by adding the following subparagraph:*
 - (iii) a variation in the terms of a take-over bid subsequent to the expiry of the initial deposit period consisting of either an increase in consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation. .

15. Section 2.31 is amended

- (a) *by adding* “not” *before* “be counted”,
- (b) *by replacing* “a condition as to the minimum number of securities to be deposited under a take-over bid has been fulfilled, but” *with* “the minimum tender requirement in paragraph 2.29.1(c) is satisfied and”, *and*
- (c) *by replacing* “the bid” *with* “the take-over bid”.

16. The Instrument is amended by adding the following sections:

Mandatory 10 day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a bid pursuant to subsection 2.32.1(1), the offeror must

- (a) extend the period during which securities may be deposited under the bid for a period of 10 days, and
- (b) promptly issue and file a news release disclosing the following
 - (i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,
 - (ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,
 - (iii) that the period during which securities may be deposited under the bid is extended for the mandatory 10 day extension period, and
 - (iv) in the case of a take-over bid that
 - (A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up, or
 - (B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event not later than one day after the expiry of the mandatory 10 day extension period.

Time limit on extension – partial take-over bids

2.31.2 A partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period. .

17. Section 2.32 is amended by deleting “a take-over bid or” wherever the expression occurs.

18. The Instrument is amended by adding the following section:

Obligation to take up and pay for deposited securities – take-over bids

2.32.1(1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period,

- (a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed,
- (b) all the terms and conditions of the take-over bid have been complied with or waived, and
- (c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10 day extension period, or an extension period subsequent to the mandatory extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid at any time subsequent to the expiry of the mandatory 10 day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is only required to take up, by the time specified in that subsection, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the mandatory 10 day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10 day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

19. Section 6.1 is amended by renumbering it as subsection 6.1(1) and by adding the following subsection:

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption. .

20. Section 6.2 is amended by renumbering it as subsection 6.2(1) and by adding the following subsection:

(2) Despite subsection (1), in Ontario, only the regulator may make such a decision. .

21. Form 62-104F1 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part 1.

22. Form 62-104F1 is amended by adding the following item:

Item 9.1. Minimum Tender Requirement and Mandatory Extension Period

State the following in italics and boldface type at the top of the cover page of the take-over bid circular:

No securities tendered to this bid will be taken up until (a) more than 50% of the outstanding securities of the class sought (excluding those securities beneficially owned, or over which control or direction is exercised by the offeror or any person acting jointly or in concert with the offeror) have been tendered to the bid, (b) the minimum deposit period required under applicable securities laws has elapsed, and (c) any and all other conditions of the bid have been complied with or waived, as applicable. If these criteria are met, the offeror will take up securities deposited under the bid in accordance with applicable securities laws and extend its bid for an additional 10 days to allow for further deposits of securities. .

23. ***Form 62-104F2 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part I.***
24. ***Form 62-104F3 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part I.***
25. ***Form 62-104F4 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part I.***
26. ***Form 62-104F4 is amended by replacing “revison” with “revision” in item 14.***
27. ***Form 62-104F5 is amended by replacing “Multilateral” with “National” in paragraph (a) of the General Provisions in Part I.***
28. ***Form 62-104F5 is amended by adding the following paragraph under subsection (2) of item 3:***
 - (a.1) if one of the terms referred to in paragraph (a) is the mandatory 10 day extension period required pursuant to paragraph 2.31.1(a) of the Instrument, the number of securities deposited under the take-over bid and not withdrawn as at the date of the variation, .
29. This Instrument comes into force on [●].

ANNEX C

BLACKLINE EXTRACTS OF MI 62-104 SHOWING PROPOSED AMENDMENTS

~~Multilateral~~National Instrument 62-104
Take-Over Bids and Issuer Bids
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Multilateral~~National~~ Instrument 62-104
Take-Over Bids and Issuer Bids

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument,

“**Act**” means, in the jurisdiction, the statute referred to in Appendix B to National Instrument 14-101 *Definitions*;

“**alternative transaction**” means, for an issuer:

- (a) an amalgamation, arrangement, consolidation, amendment to the terms of a class of equity securities or any other transaction of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder’s consent, regardless of whether the equity security is replaced with another security, but does not include
 - (i) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, through the elimination of post-consolidated fractional interests or otherwise, except to an extent that is nominal in the circumstances,
 - (ii) a termination of a holder’s interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership, or
 - (iii) a transaction between the issuer and a subsidiary of the issuer,
- (b) a transaction as a result of which a person, whether alone or with joint actors, would, directly or indirectly, acquire the issuer, or
- (c) a sale, lease or exchange of all or substantially all the property of the issuer other than in the ordinary course of business of the issuer;

“**associate**”, when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which a person serves as trustee or in a similar capacity, or
- (d) a relative of that person, including
 - (i) the spouse or, in Alberta, adult interdependent partner of that person, or
 - (ii) a relative of the person’s spouse or, in Alberta, adult interdependent partnerif the relative has the same home as that person;

“**bid circular**” means a bid circular prepared in accordance with section 2.10;

“**business day**” means a day other than a Saturday, a Sunday or a day that is a statutory holiday in the jurisdiction;

“**class of securities**” includes a series of a class of securities;

“**consultant**” has the same meaning as in National Instrument 45-106 *Prospectus and Registration Exemptions*;

“**deposit period news release**” means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 120 days and not less than 35 days that is acceptable to the board of directors of the offeree issuer, expressed as a number of days from the date of the bid;

“**equity security**” means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets;

“**initial deposit period**” means the period, including any extension, during which securities may be deposited under a take-over bid but does not include a mandatory 10 day extension period or any extension period subsequent to a mandatory 10 day extension period;

“**issuer bid**” means an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and also includes an acquisition or redemption of securities of the issuer by the issuer from those persons, but does not include an offer to acquire or redeem, or an acquisition or redemption if

- (a) no valuable consideration is offered or paid by the issuer for the securities,
- (b) the offer to acquire or redeem, or the acquisition or redemption is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders, or
- (c) the securities are debt securities that are not convertible into securities other than debt securities;

“**mandatory 10 day extension period**” means the 10 day period referred to in paragraph 2.31.1(a);

“**offer to acquire**” means

- (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 the offer has been solicited, or
- (c) any combination of the above;

“**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, except in Division 1 of Part 2 of this Instrument, a person that makes a take-over bid, an issuer bid or an 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;

“**partial take-over bid**” means a take-over bid for less than all of the class of securities subject to the bid;

“**person**” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

- (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

“published market” means, with respect to any class of securities, a market in Canada or outside of Canada on which the securities are traded, if the prices at which they have been traded on that market are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“standard trading unit” means

- (a) 1,000 units of a security with a market price of less than \$0.10 per unit,
- (b) 500 units of a security with a market price of \$0.10 or more per unit and less than \$1.00 per unit, and
- (c) 100 units of a security with a market price of \$1.00 or more per unit;

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

“take-over bid” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons, any of whom is in the local jurisdiction or whose last address as shown on the books of the offeree issuer is in the local jurisdiction, where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate 20% or more of the outstanding securities of that class of securities at the date of the offer to acquire but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders.

Definitions for purposes of the Act

1.2 (1) Except in Saskatchewan, in the Act,

- (a) **“offer to acquire”** has the same meaning as in this Instrument, and
- (b) **“offeror”** has the same meaning as in section 1.1 of this Instrument.

(2) In the definition of **“issuer bid”** in the Act, the prescribed class of issuer bids is that set out in the definition of **“issuer bid”** in this Instrument.

(3) In the definition of **“take-over bid”** in the Act, the prescribed class of take-over bids is that set out in the definition of **“take-over bid”** in this Instrument.

Affiliate

1.3 In this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.4 In this Instrument, a person controls a second person if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless the first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Computation of time

1.5 In this Instrument, a period of days is to be computed as beginning on the day following the event that began the period and ending at 11:59 p.m. on the last day of the period if that day is a business day or at 11:59 p.m. on the next business day if the last day of the period does not fall on a business day.

Expiry of bid

1.6 A take-over bid or an issuer bid expires at the later of

- (a) the end of the period, including any extension, during which securities may be deposited under the bid, and
- (b) 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 securities

1.7 In this Instrument,

- (a) a security is deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or 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.

Deemed beneficial ownership

1.8(1) In this Instrument, 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 to be the beneficial owner of a security, including an unissued security, if the offeror or the person

- (a) is the beneficial owner of a security convertible into the security within 60 days following that date, or
- (b) has a right or obligation permitting or requiring the offeror or the person, whether or not on conditions, to acquire beneficial ownership of the security within 60 days by a single transaction or a series of linked transactions.

(2) The number of outstanding securities of a class in respect of an offer to acquire includes securities that are beneficially owned as determined in accordance with subsection (1).

(3) If 2 or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to the offer or offers to acquire are deemed to be securities subject to the offer to acquire of each offeror for the purpose of determining whether an offeror is making a take-over bid.

(4) In this section, an offeror is not a beneficial owner of securities solely because there is an agreement, commitment or understanding that a security holder will tender the securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

(5) In Québec, for the purposes of this Instrument, a person that beneficially owns securities means a person that owns the securities or that holds securities registered under the name of an intermediary acting as nominee, including a trustee or agent.

Acting jointly or in concert

1.9 (1) In this Instrument, 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,

- (a) the following are deemed to be acting jointly or in concert with an offeror:
 - (i) a person that, as a result of any agreement, commitment or understanding with the offeror or with any other person acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire;
 - (ii) an affiliate of the offeror;
- (b) the following are presumed to be acting jointly or in concert with an offeror:
 - (i) a person that, as a result of any agreement, commitment or understanding 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 person acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer;
 - (ii) an associate of the offeror.

(2) Subsection (1) does not apply to a registered dealer acting solely in an agency capacity for the offeror in connection with a bid and not executing principal transactions in the class of securities subject to the offer to acquire or performing services beyond the customary functions of a registered dealer.

(3) For the purposes of this section, a person is not acting jointly or in concert with an offeror solely because there is an agreement, commitment or understanding that the person will tender securities under a take-over bid or an issuer bid, made by the offeror, that is not exempt from Part 2.

Application to direct and indirect offers

1.10 In this Instrument, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities includes 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.

Determination of market price

1.11(1) In this Instrument,

- (a) 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 in the 20 business days preceding that date,
- (b) 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 in the 20 business days preceding that date, and

- (c) if there has been trading of securities in a published market for fewer than 10 of the 20 business days 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 20 business days preceding that date:
 - (i) the average of the closing bid and ask prices for each day on which there was no trading; and
 - (ii) either the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price, or 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

(2) If there is more than one published market for a security, the market price in paragraphs (1)(a), (b) and (c) must be determined as follows:

- (a) if only one of the published markets is in Canada, the market price must be determined solely by reference to that market;
- (b) if there is more than one published market in Canada, the market price must be determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 business days preceding the date as of which the market price is being determined;
- (c) if there is no published market in Canada, the market price must 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 20 business days preceding the date as of which the market price is being determined.

(3) Despite subsections (1) and (2) for the purposes of section ~~4.1~~[4.1](#) and [subsection 4.8\(3\)](#), if an offeror acquires securities on a published market, the market price for those securities is the price of the last standard trading unit of securities of that class purchased, before the acquisition by the offeror, by a person who was not acting jointly or in concert with the offeror.

PART 2: BIDS

Division 1: Restrictions on Acquisitions or Sales

Definition of “offeror”

2.1 In this Division, “offeror” means

- (a) a person making a take-over bid or an issuer bid that is not exempt from Part 2,
- (b) a person acting jointly or in concert with a person referred to in paragraph (a),
- (c) a control person of a person referred to in paragraph (a), or
- (d) a person acting jointly or in concert with a control person referred to in paragraph (c).

Restrictions on acquisitions during take-over bid

2.2 (1) An offeror must 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 or securities convertible into securities of that class otherwise than under the bid on and from the day of the announcement of the offeror’s intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not apply to an agreement between a security holder and the offeror to the effect that the security holder will, in accordance with the terms and conditions of a take-over bid that is not exempt from Part 2, deposit the security holder’s securities under the bid.

(3) Despite subsection (1), an offeror may purchase securities of the class that are subject to a take-over bid and securities convertible into securities of that class beginning on the 3rd business day following the date of the bid until the expiry of the bid if all of the following conditions are satisfied:

- (a) the intention of the offeror,
 - (i) on the date of the bid, is to make purchases and that intention is stated in the bid circular, or
 - (ii) to make purchases changes after the date of the bid and that intention is stated in a news release issued and filed at least one business day prior to making such purchases;
- (b) the number of securities beneficially acquired under this subsection does not exceed 5% of the outstanding securities of that class as at the date of the bid;
- (c) the purchases are made in the normal course on a published market;
- (d) the offeror issues and files a news release immediately after the close of business of the published market on each day on which securities have been purchased under this subsection disclosing the following information:
 - (i) the name of the purchaser;
 - (ii) if the purchaser is a person referred to in paragraph 2.1(b), (c) or (d), the relationship of the purchaser and the offeror;
 - (iii) the number of securities purchased on the day for which the news release is required;
 - (iv) the highest price paid for the securities on the day for which the news release is required;
 - (v) the aggregate number of securities purchased on the published market during the currency of the bid;
 - (vi) the average price paid for the securities that were purchased on the published market during the currency of the bid; and
 - (vii) the total number of securities owned by the purchaser after giving effect to the purchases that are the subject of the news release;
- (e) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (f) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;
- (g) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid;
- (h) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(4) For the purposes of paragraph 2.2(3)(b), the acquisition of beneficial ownership of securities that are convertible into securities of the class that is subject to the bid shall be deemed to be an acquisition of the securities as converted.

Restrictions on acquisitions during issuer bid

2.3 (1) An offeror must 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 an issuer bid, or securities that are convertible into securities

of that class, otherwise than under the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Subsection (1) does not prevent the offeror from purchasing, redeeming or otherwise acquiring any securities of the class subject to the bid in reliance on an exemption under paragraph 4.6(a), (b) or (c).

Restrictions on acquisitions before take-over bid

2.4 (1) If, within the period of 90 days immediately preceding a take-over bid, an offeror acquired beneficial ownership of securities of the class subject to the bid in a transaction not generally available on identical terms to holders of that class of securities,

- (a) the offeror must 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 such prior transaction, or
 - (ii) at least the cash equivalent of that consideration, and
- (b) the offeror must offer to acquire under the bid that percentage of the 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 any such prior transaction was of the total number of securities of that class beneficially owned by that seller at the time of that prior transaction.

(2) Subsection (1) does not apply to a transaction that occurred within 90 days preceding the bid if either of the following conditions are satisfied:

- (a) the transaction is a trade in a security of the issuer that had not been previously issued;
- (b) the transaction is 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.

Restrictions on acquisitions after bid

2.5 During the period beginning with the expiry of a take-over bid or an issuer bid and ending at the end of the 20th business day after that, whether or not any securities are taken up under the bid, an offeror must not acquire or offer to 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 identical terms.

Exception

2.6 Subsection 2.4(1) and section 2.5 do not apply to purchases made by an offeror in the normal course on a published market if all of the following conditions are satisfied:

- (a) no broker acting for the offeror performs services beyond the customary broker's functions in regard to the purchases;
- (b) no broker acting for the offeror receives more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;
- (c) the offeror or any person acting for the offeror does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the offeror or members of the soliciting dealer group under the bid;

- (d) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

Restrictions on sales during bid

2.7 (1) An offeror, except under a take-over bid or an issuer bid, must not sell, or make or enter into an agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, beginning on the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

(2) Despite subsection (1), an offeror may, before the expiry of a bid, make or enter into an agreement, commitment or understanding to sell securities that may be taken up by the offeror under the bid, after the expiry of the bid, if the intention to sell is disclosed in the bid circular.

(3) Subsection (1) does not apply to an offeror under an issuer bid in respect of the issue of securities under a dividend plan, dividend reinvestment plan, employee purchase plan or another similar plan.

Division 2: Making a Bid

Duty to make bid to all security holders

2.8 An offeror must make a take-over bid or an issuer bid to all holders of the class of securities subject to the bid who are in the local jurisdiction by sending the bid to

- (a) each holder of that class of securities whose last address as shown on the books of the offeree issuer is in the local jurisdiction, and
- (b) each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of that class, whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

Commencement of bid

2.9 (1) An offeror must commence a take-over bid by

- (a) publishing an advertisement containing a brief summary of the take-over bid in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English, or
- (b) sending the bid to security holders described in section 2.8.

(2) An offeror must commence an issuer bid by sending the bid to security holders described in section 2.8.

Offeror's circular

2.10 (1) An offeror making a take-over bid or an issuer bid must prepare and send, either as part of the bid or together with the bid, a take-over bid circular or an issuer bid circular, as the case may be, in the following form:

- (a) Form 62-104F1 Take-Over Bid Circular, for a take-over bid; or
- (b) Form 62-104F2 Issuer Bid Circular, for an issuer bid.

(2) An offeror commencing a take-over bid under paragraph 2.9(1)(a) must,

- (a) on or before the date of first publication of the advertisement,
 - (i) deliver the bid and the bid circular to the offeree issuer's principal office,
 - (ii) file the bid, the bid circular and the advertisement,
 - (iii) request from the offeree issuer a list of security holders described in section 2.8, and
- (b) not later than 2 business days after receipt of the list of security holders referred to in subparagraph (a)(iii), send the bid and the bid circular to those security holders.

(3) An offeror commencing a take-over bid under paragraph 2.9(1)(b) must file the bid and the bid circular and deliver them to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that.

(4) An offeror making an issuer bid must file the bid and the bid circular on the day the bid is sent, or as soon as practicable after that.

Change in information

2.11(1) If, before the expiry of a take-over bid or an issuer bid or after the expiry of a bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in the bid circular or any notice of change or notice of variation that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid, the offeror must promptly

- (a) issue and file a news release, and
- (b) send a notice of the change to every person to whom the bid was required to be sent and whose securities were not taken up before the date of the change.

[\(1.1\) Despite paragraph \(1\)\(b\), an offeror is not required to send a notice of change to a security holder to whom paragraph 2.30\(2\)\(a.1\) applies.](#)

(2) Subsection (1) 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.

(3) In this section, a variation in the terms of a bid does not constitute a change in information.

(4) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

[\(5\) If an offeror is required to send a notice of change pursuant to subsection \(1\) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of change.](#)

Variation of terms

2.12 (1) If there is a variation in the terms of a take-over bid or an issuer bid, including any [reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or](#) extension of the period during which securities may be deposited under the bid, and whether or not that variation results from the exercise of any right contained in the bid, the offeror must promptly

- (a) issue and file a news release, and
- (b) send a notice of variation to every person to whom the bid was required to be sent under section 2.8 and whose securities were not taken up before the date of the variation.

[\(1.1\) Despite paragraph \(1\)\(b\), an offeror is not required to send a notice of variation to a security holder to whom paragraph 2.30\(2\)\(a.1\) applies.](#)

(2) A notice of variation must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

(3) If there is a variation in the terms of a take-over bid or an issuer bid, the period during which securities may be deposited under the bid must not expire before 10 days after the date of the notice of variation.

(3.1) If an offeror is required to send a notice of variation pursuant to subsection (1) prior to the expiry of the initial deposit period, the initial deposit period must not expire before 10 days after the date of the notice of variation.

(4) Subsections (1), ~~(3)~~ and ~~(3.1)~~ do not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid, other than an extension in respect of the mandatory 10 day extension period, resulting from the waiver where the consideration offered for the securities consists solely of cash, but in that case the offeror must promptly issue and file a news release announcing the waiver.

(5) A variation in the terms of ~~a take-over bid or~~ an 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, must not be made after the expiry of the period, including any extension of the period, during which the securities may be deposited under the bid.

(6) A variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, must not be made after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1.

Filing and sending notice of change or notice of variation

2.13 A notice of change or notice of variation in respect of a take-over bid or an issuer bid must be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office, on the day the notice of change or notice of variation is sent to security holders of the offeree issuer, or as soon as practicable after that.

Change or variation in advertised take-over bid

2.14 (1) If a change or variation occurs to a take-over bid that was commenced by means of an advertisement, and if the offeror has complied with paragraph 2.10(2)(a) but has not yet sent the bid and the bid circular under paragraph 2.10(2)(b), the offeror must

- (a) publish an advertisement that contains a brief summary of the change or variation in at least one major daily newspaper of general and regular paid circulation in the local jurisdiction in English, and in Québec in French or in French and English,
- (b) concurrently with the date of first publication of the advertisement,
 - (i) file the advertisement, and
 - (ii) file and deliver a notice of change or notice of variation to the offeree issuer's principal office, and
- (c) subsequently send the bid, the bid circular and the notice of change or notice of variation to the security holders of the offeree issuer before the expiration of the period set out in paragraph 2.10(2)(b).

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or notice of variation is not required to be filed and delivered under section 2.13.

Consent of expert – bid circular

2.15 (1) In this section and section 2.21, an expert includes a notary in Québec, solicitor, auditor, accountant, engineer, geologist or appraiser or any other person whose profession or business gives authority to a report, valuation, statement or opinion made by that person.

(2) If a report, valuation, statement or opinion of an expert is included in or accompanies a bid circular or any notice of change or notice of variation to the circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the bid circular, notice of change or notice of variation.

Delivery and date of bid documents

2.16 (1) A take-over bid, an issuer bid, a bid circular and every notice of change or notice of variation must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Except for a take-over bid commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

(3) If a take-over bid is commenced by means of an advertisement in accordance with paragraph 2.9(1)(a), a bid, bid circular, notice of change or notice of variation is deemed to have been dated as of the date of first publication of the relevant advertisement.

Division 3: Offeree Issuer's Obligations

Duty to prepare and send directors' circular

2.17 (1) If a take-over bid has been made, the board of directors of the offeree issuer must prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person to whom the bid was required to be sent under section 2.8.

(2) The board of directors of the offeree issuer must evaluate the terms of the take-over bid and, in the directors' circular,

- (a) must recommend to security holders that they accept or reject the bid and state the reasons for the recommendation,
- (b) must advise security holders that the board is unable to make, or is not making, a recommendation and state the reasons for being unable to make a recommendation or for not making a recommendation, or
- (c) must advise security holders that the board is considering whether to make a recommendation to accept or reject the bid, must state the reasons for not making a recommendation in the directors' circular and may advise security holders that they should not deposit their securities under the bid until they receive further communication from the board of directors in accordance with paragraph (a) or (b).

(3) If paragraph (2)(c) applies, the board of directors must communicate to security holders a recommendation to accept or reject the bid or the decision that it is unable to make, or is not making, a recommendation, together with the reasons for the recommendation or decision, at least 7 days before the scheduled expiry of the initial deposit period ~~during which securities may be deposited under the bid.~~

(4) A directors' circular must be in the form of Form 62-104F3 Directors' Circular.

Notice of change

2.18 (1) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a directors' circular or in any notice of change to the directors' circular that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, the board of directors of the offeree issuer must promptly issue and file a news release relating to the change and send a notice of the change to every person to whom the take-over bid was required to be sent disclosing the nature and substance of the change.

(2) A notice of change must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Filing directors' circular or notice of change

2.19 The board of directors of the offeree issuer must concurrently file the directors' circular or a notice of change in relation to it and deliver it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that date.

Individual director's or officer's circular

2.20 (1) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a separate director's or officer's circular to every person to whom the take-over bid was required to be sent under section 2.8.

(2) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a director's or officer's circular or any notice of change in relation to it that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, other than a change that is not within the control of the director or officer, as the case may be, that director or officer must promptly send a notice of change to every person to whom the take-over bid was required to be sent under section 2.8.

(3) A director's or officer's circular must be in the form of Form 62-104F4 Director's or Officer's Circular.

(4) A director's or officer's obligation to send a circular under subsection (1) or to send a notice of change under subsection (2) may be satisfied by sending the circular or the notice of change, as the case may be, to the board of directors of the offeree issuer.

(5) If a director or officer sends to the board of directors of the offeree issuer a circular under subsection (1) or a notice of change under subsection (2), the board, at the offeree issuer's expense, must promptly send a copy of the circular or notice to every person to whom the take-over bid was required to be sent under section 2.8.

(6) The board of directors of the offeree issuer or the individual director or officer, as the case may be, must concurrently file the director's or officer's circular or a notice of change in relation to it and send it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that.

(7) A notice of change in relation to a director's or officer's circular must be in the form of Form 62-104F5 Notice of Change or Notice of Variation.

Consent of expert - directors' circular/individual director's or officer's circular

2.21 If a report, valuation, statement or opinion of an expert is included in or accompanies a directors' circular, an individual director's or officer's circular or any notice of change to either circular, the written consent of the expert to the use of the report, valuation, statement or opinion must be filed concurrently with the circular or notice.

Delivery and date of offeree issuer's documents

2.22(1) A directors' circular, an individual director's or officer's circular and every notice of change must be

- (a) mailed by pre-paid mail to the intended recipient, or
- (b) delivered to the intended recipient by personal delivery, courier or other manner acceptable to the regulator or securities regulatory authority.

(2) Any circular or notice sent in accordance with this section is deemed to be dated as of the date it was sent to all or substantially all of the persons entitled to receive it.

Division 4: Offeror's Obligations

Consideration

2.23(1) If a take-over bid or an issuer bid is made, all holders of the same class of securities must be offered identical consideration.

(2) Subsection (1) does not prohibit an offeror from offering an identical choice of consideration to all holders of the same class of securities.

(3) If a variation in the terms of a take-over bid or an issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror must pay that increased consideration to each person whose securities are taken up under the bid, whether or not the securities were taken up by the offeror before the variation of the bid.

Prohibition against collateral agreements

2.24 If a person makes or intends to make a take-over bid or an issuer bid, the person or any person acting jointly or in concert with that person must not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.

Collateral agreements – exception

2.25(1) Section 2.24 does not apply to an employment compensation arrangement, severance arrangement or other employment benefit arrangement that provides

- (a) an enhancement of employee benefits resulting from participation by the security holder of the offeree issuer in a group plan, other than an incentive plan, for employees of a successor to the business of the offeree issuer, if the benefits provided by the group plan are generally provided to employees of the successor to the business of the offeree issuer who hold positions of a similar nature to the position held by the security holder, or
- (b) a benefit not described in paragraph (a) that is received solely in connection with the security holder's services as an employee, director or consultant of the offeree issuer, of an affiliated entity of the offeree issuer, or of a successor to the business of the offeree issuer, if
 - (i) at the time the bid is publicly announced, the security holder and its associates beneficially own or exercise control or direction over less than 1% of the outstanding securities of each class of securities of the offeree issuer subject to the bid, or
 - (ii) an independent committee of directors of the offeree issuer, acting in good faith, has determined that
 - (A) the value of the benefit, net of any offsetting costs to the security holder, is less than 5% of the amount referred to in paragraph 3(a), or
 - (B) the security holder is providing at least equivalent value in exchange for the benefit.

(2) In order to rely on an exception under paragraph (1)(b) the following conditions must be satisfied:

- (a) the benefit is not conferred for the purpose, in whole or in part, of increasing the amount of the consideration paid to the security holder for securities deposited under the bid or providing an incentive to deposit under the bid;
- (b) the conferring of the benefit is not, by its terms, conditional on the security holder supporting the bid in any manner; and
- (c) full particulars of the benefit are disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(3) In order to rely on an exception under subparagraph 1(b)(ii) the following conditions must be satisfied:

- (a) the security holder receiving the benefit has disclosed to the independent committee the amount of consideration that the security holder expects it will be beneficially entitled to receive under the terms of the bid in exchange for the securities beneficially owned by the security holder; and
- (b) the determination of the independent committee under subparagraph 1(b)(ii) is disclosed in the issuer bid circular or, in the case of a take-over bid, in the take-over bid circular or directors' circular.

(4) In this section, in determining the beneficial ownership of securities of a holder at a given date, any security or right or obligation permitting or requiring the security holder or any person acting jointly or in concert with the security holder, whether or not on conditions, to acquire a security, including an unissued security, of a particular class within 60 days by a single transaction or a series of linked transactions is deemed to be a security of a particular class.

Proportionate take up and payment – issuer bids

2.26 (1) If ~~a take-over bid or~~ an issuer bid is made for less than all of the class of securities subject to the bid and a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(2) Subsection (1) does not prohibit an offeror from acquiring securities under the terms of an issuer bid that, if not acquired, would constitute less than a standard trading unit for the security holder.

(3) Subsection (1) does not apply to securities deposited under the terms of an issuer bid by security holders who

- (a) are entitled to elect a minimum price per security, within a range of prices, at which they are willing to sell their securities under the bid, and
- (b) elect a minimum price which is higher than the price that the offeror pays for securities under the bid.

Proportionate take up and payment – partial take-over bids

2.26.1(1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

(4) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction.

Financing arrangements

2.27 (1) If a take-over bid or an issuer bid provides that the consideration for the securities deposited under the bid is to be paid in cash or partly in cash, the offeror must make adequate arrangements before the bid to ensure that the required funds are available to make full payment for the securities that the offeror has offered to acquire.

(2) The financing arrangements required to be made under subsection (1) may be subject to conditions if, at the time the take-over bid or the issuer bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for the securities deposited under the bid due to a financing condition not being satisfied.

Division 5: Bid Mechanics

Minimum deposit period – issuer bids

2.28 An offeror must allow securities to be deposited under ~~a take-over bid or~~ an issuer bid for a minimum deposit period of at least 35 days from the date of the bid.

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 120 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2 (1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

- (a) the offeror, prior to the issuance of the deposit period news release referred to in subsection (1), has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;
- (b) the offeror, subsequent to the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:
 - (i) the date of expiry of the take-over bid referred to in subsection (1),
 - (ii) the date of expiry of a take-over bid referred to in paragraph (a).

(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it has agreed to enter into, or determined to effect, an alternative transaction, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

- (a) the offeror, prior to the issuance of the news release, has commenced a take-over bid in respect of the securities of the offeree issuer that has yet to expire;
- (b) the offeror, subsequent to the issuance of the news release, commences a take-over bid in respect of the securities of the offeree issuer and the bid is made prior to one of the following:
 - (i) the date of completion or abandonment of the alternative transaction,
 - (ii) the date of expiry of a take-over bid referred to in paragraph (a).

Prohibition on take up – issuer bids

2.29 An offeror must not take up securities deposited under ~~a take-over bid or~~ an issuer bid until the expiration of 35 days from the date of the bid.

Prohibition on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following conditions are satisfied:

- (a) 120 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, have elapsed from the date of the bid,

(b) all terms and conditions of the bid have been complied with or waived.

(c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

Withdrawal of securities

2.30 (1) A security holder may withdraw securities deposited under a take-over bid or an issuer bid

- (a) at any time before the securities have been taken up by the offeror,
- (b) at any time before the expiration of 10 days from the date of a notice of change under section 2.11 or a notice of variation under section 2.12, or
- (c) if the securities have not been paid for by the offeror within 3 business days after the securities have been taken up.

(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder may not withdraw securities that have been deposited under the bid before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

(a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and

(b) ending at the time the offeror becomes obligated to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6) under subsection 2.32.1(7) or (8), as applicable.

(2) ~~The right of withdrawal under~~ Despite paragraph (1)(b) does not apply, a security holder may not withdraw securities that have been deposited under the take-over bid or issuer bid if

(a) the securities have been taken up by the offeror before the date of the notice of change or notice of variation,

(a.1) in the case of a partial take-over bid, the securities were deposited under the bid before the expiry of the initial deposit period and were not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or

(b) ~~one or both~~ any of the following circumstances occur:

(i) a variation in the terms of ~~the~~ a take-over bid or issuer bid consisting solely of an increase in consideration offered for the securities and an extension of the time for deposit to not later than 10 days after the date of the notice of variation;

(ii) a variation in the terms of ~~the~~ a take-over bid or issuer bid consisting solely of the waiver of one or more of the conditions of the bid where the consideration offered for the securities subject to the take-over bid or the issuer bid consists solely of cash;

(iii) a variation in the terms of a take-over bid subsequent to the expiry of the initial deposit period consisting of either an increase in consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation.

(3) The withdrawal of any securities under subsection (1) is made by sending a written notice to the depository designated in the bid circular and becomes effective on its receipt by the depository.

(4) If notice is given in accordance with subsection (3), the offeror must promptly return the securities to the security holder.

Effect of market purchases

2.31 If an offeror purchases securities as permitted by subsection 2.2(3), those purchased securities must not be counted in determining whether ~~a condition as to the minimum number of securities to be deposited under a take-over bid has been fulfilled, but the minimum tender requirement in paragraph 2.29.1(c) is satisfied and~~ must not reduce the number of securities the offeror is bound to take up under the take-over bid.

Mandatory 10 day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a bid pursuant to subsection 2.32.1(1), the offeror must

- (a) extend the period during which securities may be deposited under the bid for a period of 10 days, and
- (b) promptly issue and file a news release disclosing the following
 - (i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,
 - (ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,
 - (iii) that the period during which securities may be deposited under the bid is extended for the mandatory 10 day extension period, and
 - (iv) in the case of a take-over bid that
 - (A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up, or
 - (B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event not later than one day after the expiry of the mandatory 10 day extension period.

Time limit on extension – partial take-over bids

2.31.2 A partial take-over bid must not be extended after the expiry of the mandatory 10 day extension period.

Obligation to take up and pay for deposited securities – issuer bids

2.32(1) If all the terms and conditions of ~~a take-over bid or~~ an issuer bid have been complied with or waived, the offeror must take up and pay for securities deposited under the bid not later than 10 days after the expiry of the bid or at the time required by subsection (2) or (3), whichever is earliest.

(2) An offeror must pay for any securities taken up under ~~a take-over bid or~~ an issuer bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) Securities deposited under ~~a take-over bid or~~ an issuer bid subsequent to the date on which the offeror first takes up securities deposited under the bid must be taken up and paid for by the offeror not later than 10 days after the deposit of the securities.

(4) An offeror may not extend its ~~take-over bid or~~ issuer bid if all the terms and conditions of the bid have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsections (3) and (4), if ~~a take-over bid or~~ an issuer bid is made for less than all of the class of securities subject to the bid, an offeror is only required to take up, by the times specified in those subsections, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26 at the expiry of the bid.

(6) Despite subsection (4), if the offeror waives any terms or conditions of ~~a take-over bid or~~ an issuer bid and extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

Obligation to take up and pay for deposited securities – take-over bids

2.32.1(1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period,

- (a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed,
- (b) all the terms and conditions of the take-over bid have been complied with or waived, and
- (c) the requirement in paragraph 2.29.1(c) is satisfied.

(2) An offeror must pay for any securities taken up under a take-over bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

(3) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10 day extension period, or an extension period subsequent to the mandatory extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid at any time subsequent to the expiry of the mandatory 10 day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

(5) Despite subsection (4), if the offeror extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the bid must be extended without the offeror first taking up the securities which are subject to the rights of withdrawal.

(6) Despite subsection (1), an offeror that has made a partial take-over bid is only required to take up, by the time specified in that subsection, the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the mandatory 10 day extension period.

(8) Despite subsection (7), if at the expiry of the mandatory 10 day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period but not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10 day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

Return of deposited securities

2.33 If, following the expiry of a take-over bid or an issuer bid, an offeror knows that it will not take up securities deposited under the bid, the offeror must promptly issue and file a news release to that effect and return the securities to the security holders.

News release on expiry of bid

2.34 If all the terms and conditions of a take-over bid or an issuer bid have been complied with or waived, the offeror must issue and file a news release to that effect promptly after the expiry of the bid, and the news release must disclose

- (a) the approximate number of securities deposited, and
- (b) the approximate number that will be taken up.

PART 3: GENERAL

[...]

Part 6: — Exemptions

Exemption — general

6.1 [\(1\)](#) The regulator or the securities regulatory authority may, under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction, grant an exemption to this Instrument.

[\(2\) Despite subsection \(1\), in Ontario, only the regulator may grant such an exemption.](#)

Exemption — collateral benefit

6.2 [\(1\)](#) The regulator or the securities regulatory authority may decide for the purposes of section 2.24 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 a selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into despite that section.

[\(2\) Despite subsection \(1\), in Ontario, only the regulator may make such a decision.](#)

[...]

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 [●].

ANNEX E

**PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 PASSPORT SYSTEM**

1. *Multilateral Instrument 11-102 Passport System is amended by this Instrument.*
2. *Appendix D is amended by replacing the following:*

Take-over bids and issuer bid requirements (TOB/IB) – Restrictions on acquisitions during take-over bid	s.2.2(1) of MI 62-104	s.93.1(1)
TOB/IB – Restrictions on acquisitions during issuer bid	s.2.3(1) of MI 62-104	s.93.1(4)
TOB/IB – Restrictions on acquisitions before take-over bid	s.2.4(1) of MI 62-104	s.93.2(1)
TOB/IB – Restrictions on acquisitions after bid	s.2.5 of MI 62-104	s.93.3(1)
TOB/IB – Restrictions on sales during formal bid	s.2.7(1) of MI 62-104	s.97.3(1)
TOB/IB – Duty to make bid to all security holders	s.2.8 of MI 62-104	s.94
TOB/IB – Commencement of bid	s.2.9 of MI 62-104	s.94.1(1) and (2)
TOB/IB – Offeror’s circular	s.2.10 of MI 62-104	s.94.2(1) - (4) of <i>Securities Act</i> and s.3.1 of OSC Rule 62-504
TOB/IB – Change in information	s.2.11(1) of MI 62-104	s.94.3(1)
TOB/IB – Notice of change	s.2.11(4) of MI 62-104	s.94.3(4) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Variation of terms	s.2.12(1) of MI 62-104	s.94.4(1)

TOB/IB – Notice of variation	s.2.12(2) of MI 62-104	s.94.4(2) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Expiry date of bid if notice of variation	s.2.12(3) of MI 62-104	s.94.4(3)
TOB/IB – No variation after expiry	s.2.12(5) of MI 62-104	s.94.4(5)
TOB/IB – Filing and sending notice of change or notice of variation	s.2.13 of MI 62-104	s.94.5
TOB/IB – Change or variation in advertised take-over bid	s.2.14(1) of MI 62-104	s.94.6(1)
TOB/IB – Consent of expert – bid circular	s.2.15(2) of MI 62-104	s.94.7(1)
TOB/IB – Delivery and date of bid documents	s.2.16(1) of MI 62-104	s.94.8(1)
TOB/IB – Duty to prepare and send directors’ circular	s.2.17 of MI 62-104	s.95(1)–(4) of <i>Securities Act</i> and s.3.2 of OSC Rule 62-504
TOB/IB – Notice of change	s.2.18 of MI 62-104	s.95.1(1) and (2) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Filing directors’ circular or notice of change	s.2.19 of MI 62-104	s.95.2
TOB/IB – Change in information in director’s or officer’s circular or notice of change	s.2.20(2) of MI 62-104	s.96(2)
TOB/IB – Form of director’s or officer’s circular	s.2.20(3) of MI 62-104	s.96(3) of <i>Securities Act</i> and s.3.3 of OSC Rule 62-504
TOB/IB – Send director’s or officer’s circular or notice of change to securityholders	s.2.20(5) of MI 62-104	s.96(5)

TOB/IB – File and send to offeror director’s or officer’s circular or notice of change	s.2.20(6) of MI 62-104	s.96(6)
TOB/IB – Form of notice of change for director’s or officer’s circular	s.2.20(7) of MI 62-104	s.96(7) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Consent of expert, directors’ circular, etc.	s.2.21 of MI 62-104	s.96.1
TOB/IB – Delivery and date of offeree issuer’s documents	s.2.22(1) of MI 62-104	s.96.2(1)
TOB/IB – Consideration	s.2.23(1) of MI 62-104	s.97(1)
TOB/IB – Variation of consideration	s.2.23(3) of MI 62-104	s.97(3)
TOB/IB – Prohibition against collateral agreements	s.2.24 of MI 62-104	s.97.1(1)
TOB/IB – Proportionate take up and payment	s.2.26(1) of MI 62-104	s.97.2(1)
TOB/IB – Financing arrangements	s.2.27(1) of MI 62-104	s.97.3(1)
TOB/IB – Minimum deposit period	s.2.28 of MI 62-104	s.98(1)
TOB/IB – Prohibition on take up	s.2.29 of MI 62-104	s.98(2)
TOB/IB – Obligation to take up and pay for deposited securities	s.2.32 of MI 62-104	s.98.3
TOB/IB – Return of deposited securities	s.2.33 of MI 62-104	s.98.5
TOB/IB – News release on expiry of bid	s.2.34 of MI 62-104	s.98.6
TOB/IB – Language of bid documents	s.3.1 of MI 62-104	n/a

TOB/IB – Filing of documents by offeror	s.3.2(1) of MI 62-104	s.98.7 of <i>Securities Act</i> and s.5.1(1) of OSC Rule 62-504
TOB/IB – Filing of documents by offeree issuer	s.3.2(2) of MI 62-104	s.5.1(2) of OSC Rule 62-504
TOB/IB – Time period for filing	s.3.2(3) of MI 62-104	s.5.1(3) of OSC Rule 62-504
TOB/IB – Filing of subsequent agreement	s.3.2(4) of MI 62-104	s.5.1(4) of OSC Rule 62-504
TOB/IB – Certification of bid circulars	s.3.3(1) of MI 62-104	s.99(1)
TOB/IB – All directors and officers sign	s.3.3(2) of MI 62-104	s.99(2)
TOB/IB – Certification of directors’ circular	s.3.3(3) of MI 62-104	s.99(3)
TOB/IB – Certification of individual director’s or officer’s circular	s.3.3(4) of MI 62-104	s.99(4)
TOB/IB – Obligation to provide security holder list	s.3.4(1) of MI 62-104	s.99.1(1)
TOB/IB – Application of Canada Business Corporations Act	s.3.4(2) of MI 62-104	s.99.1(2)
TOB/IB – Early Warning	s.5.2 of MI 62-104	s.102.1(1) – (4) of <i>Securities Act</i> and s.7.1 of OSC Rule 62-504
TOB/IB – Acquisitions during bid	s.5.3 of MI 62-104	s.102.2(1) and (2) of <i>Securities Act</i> and s.7.2(1) of OSC Rule 62-504
TOB/IB – Copies of news release and report	s.5.5 of MI 62-104	s.7.2(3) of OSC Rule 62-504

with the following:

Take-over bid and issuer bid requirements	NI 62-104
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3. This Instrument comes into force on [●].

ANNEX F

**PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 13-102 SYSTEM FEES FOR SEDAR AND NRD**

1. *Multilateral Instrument 13-102 System Fees for SEDAR and NRD is amended by this Instrument.*
2. *Subsection 1(1) is amended*
 - (a) *by replacing the definition of “issuer bid” with the following:*

“issuer bid” means an issuer bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies; , **and**
 - (b) *by replacing the definition of “take-over bid” with the following:*

“take-over bid” means a take-over bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies. .
3. This Instrument comes into force on [●].

ANNEX G

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 43-101 STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

1. *National Instrument 43-101 Standards of Disclosure for Mineral Projects is amended by this Instrument.*
2. *Section 1.1 is amended by adding the following definition:*
“initial deposit period” has the meaning ascribed to that term in section 1.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*. .
3. *Subparagraph 4.2(5)(a)(ii) is amended by replacing “expiry of the take-over bid” with “the expiry of the initial deposit period”.*
4. This Instrument comes into force on [●].

ANNEX H

**PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 51-105 ISSUERS QUOTED IN THE U.S.
OVER-THE-COUNTER MARKETS**

1. *Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.*
2. *Section 16 is amended by replacing “Multilateral” with “National”.*
3. This Instrument comes into force on [●].

ANNEX I
PROPOSED CHANGES TO
COMPANION POLICY 55-104CP INSIDER REPORTING
REQUIREMENTS AND EXEMPTIONS

1. *The changes proposed to Companion Policy 55-104CP Insider Reporting Requirements and Exemptions are set out in this Schedule.*
2. *Subsection 3.2(3) is changed*
 - (a) *by replacing “Multilateral” with “National”, and*
 - (b) *by deleting “and in Ontario, subsection 90(1) of the Ontario Act”.*
3. These changes become effective on [●].

ANNEX J

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 61-101 *PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS*

1. *Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is amended by this Instrument.*
2. *Section 1.1 is amended*
 - (a) *by replacing “Multilateral” with “National” and deleting “, and in Ontario, a formal take-over bid or formal issuer bid as defined in section 89(1) of the Securities Act” in the definition of “bid”,*
 - (b) *by replacing “Multilateral” with “National” and deleting “, and in Ontario, section 89(1) of the Securities Act” in the definition of “issuer bid”,*
 - (c) *by replacing “Multilateral” with “National” and deleting “and in Ontario, section 91 of the Securities Act,” in the definition of “joint actors”,*
 - (d) *by replacing “Multilateral” with “National” wherever the expression occurs, deleting “and in Ontario, subsections 1.3 (1), (2) and (3) of Ontario Securities Commission Rule 62-504 Take-Over Bids and Issuer Bids,” and deleting “and in Ontario, subsections 1.3 (1), (2) and (3) of OSC Rule 62-504 Take-Over Bids and Issuer Bids,” in the definition of “market capitalization”,*
 - (e) *by replacing “Multilateral” with “National” and deleting “, and in Ontario, section 89(1) of the Securities Act” in the definition of “offeree issuer”,*
 - (f) *by replacing “Multilateral” with “National” and deleting “, and in Ontario, section 89(1) of the Securities Act” in the definition of “offeror”, and*
 - (g) *by replacing “Multilateral” with “National” and deleting “, and in Ontario, section 89(1) of the Securities Act” in the definition of “take-over bid”.*
3. *Subsection 1.6(2) is amended*
 - (a) *by replacing “the following provisions apply:” with “the provisions of section 1.8 of National Instrument 62-104 Take-Over Bids and Issuer Bids apply.”,*
 - (b) *by repealing paragraph 1.6(2)(a), and*
 - (c) *by repealing paragraph 1.6(2)(b).*
4. *Paragraph 2.2(1)(d) is amended*
 - (a) *by replacing “Multilateral” with “National”, and*
 - (b) *by deleting “and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 Take-Over Bids and Issuer Bids.”,*

5. ***Paragraph 4.2(3)(a) is amended***

(a) ***by replacing “Multilateral” with “National”, and***

(b) ***by deleting “and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 Take-Over Bids and Issuer Bids,”.***

6. ***Paragraph 5.3(3)(a) is amended***

(a) ***by replacing “Multilateral” with “National”, and***

(b) ***by deleting “and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 Take-Over Bids and Issuer Bids,”.***

7. ***Section 6.10 is amended***

(a) ***by replacing “Multilateral” with “National”, and***

(b) ***by deleting “and in Ontario, sections 94.7 and 96.1 of the Securities Act,”.***

8. This Instrument comes into force on [●].

ANNEX K

PROPOSED CHANGES TO COMPANION POLICY 61-101CP TO MULTILATERAL INSTRUMENT 61-101 PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

1. *The changes proposed to Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions are set out in this Schedule.*
2. *Section 4.1 is changed by replacing “Subsection 2.2(1)(d) of the Instrument requires, for an insider bid, the disclosure required by Form 62-104F1 Take-Over Bid Circular of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids, and in Ontario, Form 62-504F1 Take-Over Bid Circular of OSC Rule 62-504 Take Over Bids and Issuer Bids, and by Form 62-104F2 Issuer Bid Circular of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids, and in Ontario, Form 62-504F2 Issuer Bid Circular of OSC Rule 62-504 Take Over Bids and Issuer Bids, appropriately modified. In our view, Form 62-104F2 and in Ontario, Form 62-504F2, disclosure would generally include, in addition to Form 62-104F1 and in Ontario, Form 62-504F1, disclosure,” with “For an insider bid, in addition to the disclosure required by Form 62-104F1 Take-Over Bid Circular of National Instrument 62-104 Take-Over Bids and Issuer Bids, subsection 2.2(1)(d) of the Instrument requires the disclosure required by Form 62-104F2 Issuer Bid Circular of National Instrument 62-104 Take-Over Bids and Issuer Bids, appropriately modified. In our view, Form 62-104F2 disclosure would generally include”.*
3. *Section 4.2 is changed by deleting “, and in Ontario, Form 62-504F2,” wherever the expression occurs.*
4. These changes become effective on [●].

ANNEX L

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 62-103 *THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES*

1. *National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues is amended by this Instrument.*
2. *Subsection 1.1(1) is amended*
 - (a) *by replacing “MI” with “NI” and deleting “and, in Ontario, has the meaning ascribed under paragraphs (a.1) to (f) of the definition of “associate” in subsection 1(1) of the Securities Act (Ontario)” in the definition of “associate”,*
 - (b) *by replacing “MI” with “NI” and deleting “and, in Ontario, subsections 102.1(1) and 102.1(2) of the Securities Act (Ontario)” in the definition of “early warning requirements”,*
 - (c) *by replacing the definition of “formal bid” with the following:*

“formal bid” means a take-over bid or issuer bid made in accordance with Part 2 of NI 62-104; ,
 - (d) *by repealing the definition of “MI 62-104”,*
 - (e) *by replacing “MI” with “NI” and deleting “and, in Ontario, subsection 102.1(3) of the Securities Act (Ontario)” in the definition of “moratorium provisions”,*
 - (f) *by adding the following definition:*

“NI 62-104” means National Instrument 62-104 *Take-Over Bids and Issuer Bids*;
 - (g) *by replacing “MI” with “NI” and deleting “and, in Ontario, subsection 89(1) of the Securities Act (Ontario)” in the definition of “offeror”, and*
 - (h) *by replacing “MI” with “NI” and deleting “and, in Ontario, subsection 89(1) of the Securities Act (Ontario)” in the definition of “offeror’s securities”.*
3. *Appendix D is amended*
 - (a) *by replacing “MI 62-104” with “NI 62-104” wherever the expression occurs, and*
 - (b) *by replacing “Subsections 1(5) and 1(6) and sections 90 and 91 of the Securities Act (Ontario)” with “Subsections 1(5) and 1(6) of the Securities Act (Ontario) and sections 1.8 and 1.9 of NI 62-104”.*
4. This Instrument comes into force on [●].

ANNEX M
LOCAL MATTERS