

**CSA Notice of Amendments to
Take-Over Bid Regime
Amendments to Multilateral Instrument 62-104 *Take-Over Bids
and Issuer Bids*
and
Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids*
and
Consequential Amendments**

February 25, 2016

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to the regime governing the conduct of take-over bids set out in 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**) (together, the **Bid Amendments**)¹.

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**.

In Ontario, legislative amendments were made to the Ontario Act to accommodate the adoption of MI 62-104 in Ontario, as amended by the Bid Amendments and the Early Warning Amendments (as defined below), such amended instrument, **NI 62-104**. These legislative amendments will come into effect upon proclamation by the Lieutenant Governor of Ontario. The repeal of the Ontario Rule and the related consequential amendments and changes necessary to facilitate the adoption of NI 62-104 in Ontario are referred to as the **Harmonization**.

As a result of the Bid Amendments and the Harmonization, we are also adopting consequential amendments and changes, as applicable, 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**);

¹ The Bid Amendments also include a technical amendment to the meaning of “market price” in MI 62-104 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.

- 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**).

In addition, we are also concurrently adopting amendments and changes to the early warning system, which amendments and changes are set out in the CSA Notice of Amendments to Early Warning System dated February 25, 2016 (collectively, the **Early Warning Amendments**).

In some jurisdictions, Ministerial approval is required for these amendments and changes. Except in Ontario, provided all necessary approvals are obtained, the Bid Amendments, Consequential Amendments, and Early Warning Amendments will come into force on **May 9, 2016**. In Ontario, NI 62-104, amendments and changes related to the Harmonization, and the Consequential Amendments will come into force on the later of (a) May 9, 2016, and (b) the day on which certain sections of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force. Please refer to Annex N to the version of this notice published in Ontario for more information.

Substance and Purpose

The Bid Amendments will 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 Bid Amendments will 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 105 days unless

- (a) the offeree board states in a news release a shorter deposit period for the bid of not less than 35 days, 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 intends to effect, pursuant to an agreement or otherwise, a specified alternative transaction, in which case all contemporaneous take-over bids must remain open for a deposit period of at least 35 days.

We are also amending other aspects of the take-over bid regime in conjunction with these key amendments. A comprehensive discussion of the purpose and objectives of the Bid Amendments, as originally proposed, is included in the CSA Notice and Request for Comment dated March 31, 2015 (such notice, proposed bid amendments, and related changes are collectively referred to as the **2015 Materials**).

The Bid Amendments involve fundamental changes to the bid regime to establish a majority acceptance standard for all non-exempt take-over bids, a mandatory extension period to alleviate offeree security holder coercion concerns, and a 105 day minimum deposit period to address concerns that offeree boards do not have enough time to respond to an unsolicited take-over bid. The CSA has determined not to amend National Policy 62-202 *Defensive Tactics* (**NP 62-202**) in connection with these amendments. We wish to remind participants in the capital markets of the continued applicability of NP 62-202, which means that securities regulators will be prepared to examine the actions of offeree boards in specific cases, and in light of the amended bid regime, to determine whether they are abusive of security holder rights.

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.

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.

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* to advise that, 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.

On March 31, 2015, we published the 2015 Materials setting out the specific proposed amendments to the bid regime.

Summary of Written Comments Received by the CSA

The comment period for the 2015 Materials ended on June 29, 2015. We received 22 comment letters in respect of the 2015 Materials from various market participants. We have considered the comments received and thank all of the commenters for their input.

The names of the commenters are set out in Annex A to this notice and a summary of their comments, together with our responses, are contained in Annex B to this notice.

Summary of Changes since Publication for Comment

After consideration of the comments received on the 2015 Materials, and further reflection and analysis, we have made some revisions to the 2015 Materials. Those revisions are reflected in the amendments and changes we are publishing in Annexes C and E to this notice. As these changes are not material, we are not publishing the Bid Amendments for a further comment period.

The following is a summary of the key changes that were made to the 2015 Materials. A blackline comparison showing all changes to current MI 62-104 as a result of the Bid Amendments is set out in Annex D to this notice.

(a) Minimum Deposit Period

In the 2015 Materials, we proposed that all non-exempt take-over bids be subject to a minimum deposit period of 120 days, subject to exceptions. We have determined to adjust the minimum deposit period to 105 days in light of our consideration of the potential impact of the 120 Day Requirement on an offeror's ability to utilize compulsory acquisition provisions under business corporation statutes in Canada.

Federal and provincial business corporation statutes in Canada provide a method by which an offeror that holds not less than 90% of a class of the offeree issuer's shares can acquire all of the remaining shares of the class on an expedited basis and without approval by the holders of the remaining offeree issuer shares² (the **Compulsory Acquisition Provisions**). However, the Compulsory Acquisition Provisions are generally available only where the take-over bid is

² See, for example, ss. 206(2) of the *Canada Business Corporations Act*.

accepted by holders of not less than 90% of the shares of the class subject to the bid *within 120 days after the date of the bid*. As a result, the 120 Day Requirement (and 10 Day Extension Requirement) could result in the Compulsory Acquisition Provisions not being available to an offeror following a take-over bid where the 120 Day Requirement applies.

In light of the foregoing, we have adjusted the minimum deposit period to 105 days. We believe that a minimum deposit period of 105 days will generally allow sufficient time for an offeror to conclude its bid and satisfy the subsequent 10 Day Extension Requirement before the 120th day from the date of its bid, while taking into account the potential impact that holidays in various Canadian jurisdictions may have on the offeror's ability to receive acceptances. This minimum deposit period meets the CSA's policy objective of providing offeree boards with a longer, fixed period of time to respond to a take-over bid while making it reasonably practicable for an offeror to avail itself of the Compulsory Acquisition Provisions.

(b) Definition of "alternative transaction"

We have made drafting changes to the definition of "alternative transaction" and related guidance in NP 62-203 in order to clarify the intended scope of the definition and assist with its interpretation and application. In particular, we have removed clause (b) from the definition and have instead incorporated the substance of that former clause as guidance for the overall scope of the definition. Section 2.13 of NP 62-203 now states, in part, that the definition of "alternative transaction" is intended to encompass transactions agreed to or initiated by the issuer that could result in the acquisition of the issuer or the business of the issuer as an alternative to doing so by means of a take-over bid.

We have also revised the guidance in NP 62-203 in light of comments received. Since the "alternative transaction" provisions apply to the minimum deposit period for an offeror's bid, an offeror should assess whether or not an issuer has entered into an "alternative transaction". As such, the guidance in section 2.14 of NP 62-203 now recommends that an offeror should reasonably determine whether an issuer's announced transaction is an "alternative transaction" before either, as the case may be, (i) reducing the initial deposit period of its outstanding take-over bid to not less than 35 days or (ii) commencing a take-over bid for the issuer with an initial deposit period of not less than 35 days.

(c) Deposit period news release

We have revised the definition of "deposit period news release" to remove the words "that is acceptable to the board of directors of the offeree issuer" when describing the initial deposit period stated in the offeree issuer's news release. We presume that any initial deposit period stated by an offeree issuer in respect of a bid will, in fact, be acceptable to the offeree board and have removed that concept from the definition because it is not otherwise relevant to the operation of the definition.

(d) Mandatory 10-day extension period

We have clarified that, except in the case of a partial take-over bid, the mandatory 10-day extension period for a bid referred to in paragraph 2.31.1(a) of NI 62-104 must be a period of *at least* 10 days and not, as the original drafting may have suggested, exactly 10 days. We note, however, that if an offeror chooses to extend its bid after expiry of the initial deposit period for a period of more than 10 days, the bid regime still requires that the offeror take up securities deposited during the extension period not later than 10 days after deposit of the securities.

We have also clarified in section 2.31.2 of NI 62-104 that, in the case of a partial take-over bid, the mandatory 10-day extension period must not exceed 10 days, nor can an offeror extend its partial take-over bid after the expiry of the mandatory 10-day extension period. As noted in the 2015 Materials, an extension period of more than 10 days is not necessary because a partial take-over bid is for a fixed number of securities subject to pro-ration, such that the offeror will have effectively achieved its desired minimum number of tenders before commencement of the mandatory 10-day extension period and the number of securities ultimately taken up will not increase as a result of tenders during the mandatory 10-day extension period.

(e) Proportionate take up mechanics for partial take-over bids

A number of commenters on the 2015 Materials indicated that it would be helpful if the CSA provided examples showing how the proportionate take up provisions applicable to partial take-over bids would apply after adoption of the Bid Amendments. We have added examples in section 2.17 of NP 62-203.

(f) Transition

We have included a transition provision in section 7.1 of NI 62-104 to clarify the application of the Bid Amendments to take-over bids made in respect of offeree issuers in certain circumstances both before and after the effective date of the Bid Amendments.

Local Matters

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

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Questions

Please refer your questions to any of the following:

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Annex A

Names of Commenters

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Canadian Foundation for Advancement of Investor Rights
Canadian Investor Relations Institute
Canadian Oil Sands Limited
Dentons Canada LLP
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Hurt Capital Inc.
Institute of Corporate Directors
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Investment Industry Association of Canada
McCarthy Tétrault LLP
McMillan LLP
Norton Rose Fulbright Canada LLP
Osler, Hoskin & Harcourt LLP
Simon A. Romano and Ramandeep K. Grewal
Richard Steinberg, Aaron Atkinson and Bradley Freelan

Annex B

Summary of Comments and CSA Responses

The following is a summary of comments and CSA responses in respect of the proposed amendments to MI 62-104, proposed changes to NP 62-203 and proposed consequential amendments (collectively, the "**Proposed Bid Amendments**") published on March 31, 2015 in the 2015 Materials. Defined terms used herein have the same meaning as is ascribed to them in the notice to which this is appended.

PART I. GENERAL COMMENTS

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
A.	COMMENTS ON KEY ELEMENTS OF THE PROPOSED BID AMENDMENTS		
1.	Whether the proposed Minimum Tender Requirement is appropriate	The majority of commenters who commented on this aspect of the Proposed Bid Amendments are supportive of the Minimum Tender Requirement. Commenters generally agreed that the Minimum Tender Requirement, coupled with the 10 Day Extension Requirement, addresses the "pressure to tender" or coercion concerns raised by the CSA and contributes to the enhancement of the quality and integrity of the take-over bid regime.	We acknowledge the comments of support for the Minimum Tender Requirement.
		<p>Three commenters suggested that there may be certain circumstances where the Minimum Tender Requirement should not apply.</p> <p>Two commenters raised the concern that there may be circumstances where the Minimum Tender Requirement would prevent a non-coercive bid from proceeding. For example, where a control block holder or other insiders do not</p>	<p>We acknowledge that enhanced leverage for blockholders is a likely consequence of the Bid Amendments; however, the CSA believe that such leverage is inherent to the new "majority tender" premise of the Bid Amendments.</p> <p>We did not make any changes to the</p>

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		<p>support a transaction because they have a stake in the outcome that is different from that of the minority security holders, it may not be practically possible for an offeror to achieve majority acceptance. Rather than excluding securities held in a control block or by insiders from being counted toward the Minimum Tender Requirement, the commenters recommend addressing this concern through exemptive relief from the Minimum Tender Requirement where the CSA determines it to be appropriate. The commenters suggest that the CSA should include guidelines in NP 62-203 outlining the circumstances in which the CSA would be likely to grant such exemptive relief.</p> <p>One commenter argued that the Minimum Tender Requirement should not apply where the offeror (whether alone or with joint actors) already exercises legal control over the offeree issuer.</p>	<p>Minimum Tender Requirement to accommodate the position that there may be specific circumstances where the Minimum Tender Requirement should not apply. We do not believe that there is a compelling basis for effectively creating two different minimum tender regimes depending on the control dynamic of the issuer.</p> <p>Since all considerations of exemptive relief are based on unique fact circumstances, we do not think that it is appropriate to provide guidance that attempts to predict or outline in advance the circumstances under which securities regulatory authorities would be likely to grant exemptive relief from the Minimum Tender Requirement.</p>
2.	Whether the proposed 10 Day Extension Requirement is appropriate	The majority of commenters who commented on this aspect of the Proposed Bid Amendments are supportive of the 10 Day Extension Requirement. Commenters generally agreed that the 10 Day Extension Requirement addresses the "pressure to tender" or coercion concerns raised by the CSA and contributes to the enhancement of the quality and integrity of the take-over bid regime.	We acknowledge the comments of support for the 10 Day Extension Requirement.
3.	Whether the proposed 120 Day Requirement is appropriate	Almost all commenters who commented on this aspect of the Proposed Bid Amendments are generally supportive of providing offeree boards with a longer, fixed period of time to	We acknowledge the comments in support of, and expressing concerns with, the proposed 120 Day Requirement. We

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		<p>consider and respond to a take-over bid. They agreed with the CSA's concern that under the current regime 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.</p> <p>Although a majority of commenters feel that a minimum of 120 days is an appropriate period of time, six commenters suggested that 120 days is too long, with most of these commenters indicating that 90 days would provide the benefits of more time without the disadvantages of an overly long bid period. These commenters noted in particular that:</p> <ul style="list-style-type: none"> • a 120 day bid period may deter potential offerors (for a number of reasons, including increased financing costs and the potential for increased competition associated with a longer bid period), resulting in a reduction of the level of hostile bid activity and missed opportunities for security holders; and • market data suggests that 90 days has historically been enough time to draw out competing bids and alternative transactions. <p>Only one commenter is not supportive of increasing the existing 35 day minimum deposit period.</p>	<p>have determined to adjust to the minimum deposit period to 105 days for the reasons described below.</p>
		<p>One commenter raised the concern that the 120 day minimum deposit period may result in compulsory acquisition provisions of certain Canadian corporate statutes (such as the</p>	<p>Upon further review of the Canadian corporate law compulsory acquisition provisions, we have determined to adjust</p>

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		<p><i>Canada Business Corporations Act</i>) not being available to offerors following a take-over bid. The right to acquire securities under statutory compulsory acquisition provisions is only available where, within 120 days of the date of a take-over bid, the bid is accepted by the holders of not less than 90% of the securities of the applicable class. The commenter argued that reducing the 120 day period by a modest amount – such as to 115 or 110 days – would likely not address the issue, noting that in practice it is typically not until an offeror has extended a bid on at least one occasion that the 90% threshold is met.</p>	<p>the minimum deposit period to 105 days. We believe that a minimum deposit period of 105 days will generally allow sufficient time for an offeror to conclude its bid and satisfy the subsequent 10 Day Extension Requirement before the 120th day from the date of its bid, while taking into account the potential impact that holidays in various Canadian jurisdictions may have on the offeror’s ability to receive acceptances. We believe that this minimum deposit period will meet the CSA’s policy objective of providing offeree issuer boards with a longer, fixed period of time to respond to a take-over bid while making it reasonably practicable for an offeror to avail itself of the compulsory acquisition provisions if its bid has been accepted by offeree security holders within 120 days from the date of its bid.</p>
B.	COMMENTS ON SPECIFIC ASPECTS OF THE PROPOSED BID AMENDMENTS		
1.	<p>Issues related to the Minimum Tender Requirement in the context of partial take-over bids</p>	<p>Three commenters raised concerns over the application of the Minimum Tender Requirement in the context of partial take-over bids.</p>	<p>We did not make any changes to the Minimum Tender Requirement to accommodate the comments made in relation to partial take-over bids.</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
		<p>One such commenter suggested that offerors should have the option of choosing between the Minimum Tender Requirement and a "minimum consent requirement" in the context of a partial take-over bid. This would alleviate the concern that the Minimum Tender Requirement, combined with the lack of withdrawal rights during the mandatory 10 day extension period, may reduce the likelihood of successful partial take-over bids and thus strongly discourage offerors from making partial take-over bids. Such minimum consent requirement would require that offeree security holders evidence their consent to a partial take-over bid pursuant to a written instrument and not have to tender their securities until the mandatory 10 day extension period.</p> <p>Similarly, another commenter argued that the Proposed Bid Amendments do not fully resolve the coercion and "pressure to tender" concerns for partial take-over bids because offeree security holders have different incentives to tender as compared to a take-over bid for all securities. The commenter proposed to address this issue by including a "form of acceptance" in the bid circular through which offeree security holders could separately vote for or against the partial bid rather than be obliged to support the bid by tendering to it.</p> <p>One commenter raised the concern that the Minimum Tender Requirement may preclude potentially desirable partial take-over bids such as, for example, "any and all" partial bids that accommodate a block trade at a greater than 15% premium to market price but which are also open to all other security holders.</p>	<p>The suggestions proposed by the commenters would require unduly complex changes to the Proposed Bid Amendments and result in a separate regime for partial take-over bids. We think those consequences would be undesirable and unnecessary, particularly given that partial take-over bids are rare. However, we will monitor the impact of the Bid Amendments on partial take-over bids.</p>

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2.	<p>Issues concerning proposals to allow a shortened minimum deposit period of not less than 35 days when an offeree board issues a deposit period news release announcing a shorter minimum bid period or where there is a specified alternative transaction</p>	<p>Eight commenters raised various concerns or suggestions in relation to the proposals for shortened deposit periods either initiated by an offeree board through the issuance of a deposit period news release or automatically in the case of a specified alternative transaction.</p> <p>Among the four commenters who raised concerns about an offeree board’s ability to reduce the minimum 120 day deposit period through the issuance of a deposit period news release:</p> <ul style="list-style-type: none"> • two commenters suggested that it creates uncertainty and/or confusion for security holders; • two commenters noted that it may reduce the probability of competing bids; and • two commenters recommended that the power to reduce the minimum deposit period to 35 days should be in the hands of offeree security holders, rather than the offeree board. <p>One commenter raised the issue that the offeree board’s ability to shorten the minimum deposit period could provide for potentially different outcomes for an unsupported offeror depending on whether a competing supported transaction is</p>	<p>We did not make any changes to the Proposed Bid Amendments to accommodate the concerns raised in respect of shortened minimum deposit periods for a bid.</p> <p>We believe that the framework for reducing a bid period under the Proposed Bid Amendments, including the requirements that the offeree board issue and file a news release and that the offeror send a notice of variation upon shortening its bid, is adequately clear.</p> <p>We believe that the offeree board’s ability to reduce the minimum deposit period would not, in and of itself, reduce the probability of competing bids.</p> <p>We believe that it would be impracticable for security holders to be responsible for deciding whether and when to reduce the minimum deposit period, and that security holder decision-making is appropriately captured by the Minimum Tender Requirement.</p> <p>We recognize that hostile offerors or offeree issuers may make tactical use of the timing required to complete different transaction structures under the Bid</p>

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		<p>structured as a take-over bid or as an alternative form of transaction. The commenter suggested three alternatives to the CSA's proposal: (1) an automatic reduction to 35 days (or some other shorter default period) upon the announcement by an offeree issuer of a supported transaction, regardless of the structure adopted; (2) a minimum deposit period of 120 days regardless of the structure adopted; or (3) giving offeree issuers the ability to enforce equalization of timing beyond 120 days.</p> <p>One commenter raised concerns over the automatic reduction to 35 days in cases where an offeree issuer has agreed to enter into a plan of arrangement as a hostile offeror could gain an advantage by having its bid accepted before the plan is approved.</p> <p>Two commenters recommended that, to address the fact that alternative transactions usually take more than 35 days to be completed and a hostile offeror may benefit from a reduced minimum deposit period, in the case of an alternative transaction, offeree security holders should have the opportunity to consider both offers at the same time. Accordingly, these commenters suggested that the minimum deposit period for any then outstanding or subsequent take-over bids should be the expiry date of the alternative transaction, rather than 35 days from the date of the bid.</p>	<p>Amendments. However, the Bid Amendments are not premised on equalization of timing for all bids and alternative transactions, and are instead intended to preserve both offeree board discretion and "first mover advantage" on the part of an offeror, while avoiding an excessively complex regime.</p>
		<p>One commenter suggested that an offeree issuer should be able to shorten the minimum deposit period whether or not a take-over bid is on the horizon (e.g. by announcing that for the next two years the minimum deposit period for all formal</p>	<p>To ensure clarity as to the application of a shortened deposit period, we believe that it is preferable that the Bid Amendments permit offeree boards to adjust the timing</p>

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		take-over bids will be 40 days). This could have the effect of encouraging more take-over bids.	<p>of a deposit period only in the context of a specific take-over bid.</p> <p>This framework would not preclude an offeree board from announcing its willingness to reduce the minimum deposit period for any future take-over bid. However, such announcement will not in itself have the effect of reducing the deposit period for future-commenced bids.</p>
C.	OTHER COMMENTS		
1.	Role of security holder rights plans under the new regime, and defensive tactics more generally	<p>Nine commenters raised concerns over the current lack of specific guidance from the CSA on the use of security holders rights plans under the new regime. In particular, the commenters suggested that the CSA should provide more guidance on: (1) the treatment of rights plans as they relate to deposit periods; and (2) the use of rights plans as they relate to exempt take-over bids or "creeping bids".</p> <p>One commenter suggested that the CSA could address the concerns raised by including a transition period to allow issuers to amend their rights plans to comply with the Proposed Bid Amendments, or include express language in the legislation that provisions in indentures, agreements or constating documents of issuers will not be binding on any person to the extent that such provisions are contrary to the Proposed Bid Amendments.</p>	We wish to remind participants in the capital markets of the applicability of NP 62-202, which means that securities regulatory authorities will be prepared to examine the actions of offeree boards in specific cases, and in light of the amended bid regime, to determine whether they are abusive of security holder rights.

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
		Several commenters suggested that the CSA should undertake a broader review of NP 62-202 with two commenters noting the need for the CSA to look at voting pills in particular.	
2.	Technical drafting considerations with respect to the text of the Proposed Bid Amendments	A number of commenters raised technical drafting considerations with respect to the text of the Proposed Bid Amendments.	We thank the commenters for their input. In response to the comments received we have made certain discrete drafting changes to the Proposed Bid Amendments. We note that certain proposed drafting changes were beyond the scope of the Proposed Bid Amendments and, as a result, could not be fully considered by the CSA at this time.

PART II. COMMENTS ON SPECIFIC QUESTIONS

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
1.	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 minimum deposit period for its bid as a result of the issuance of a deposit period news release?	One commenter suggested that an offeror should be allowed to account for the possibility of a reduced deposit period in its original bid documents. If the reduced period is activated, the offeror would be required to issue a news release only, rather than also having to prepare and mail a notice of variation.	We did not make any changes to the Proposed Bid Amendments to address the comment. Although allowing an offeror to rely solely on a news release would result in expediency for the offeror, we believe that it would come at the expense of the interests of security holders who should be assured of receiving a notice of variation in all circumstances where the

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
			terms of a bid are varied.
2.	<p>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.</p>	<p>Three commenters agreed with the scope of the definition.</p> <p>One commenter suggested that a broader definition of "alternative transaction" is appropriate and proposed that the definition import the concept of a transaction agreed to by the offeree issuer's board that "affects materially" the control of the issuer. The commenter expressed concern that, absent this change, an offeree issuer board could undertake a transaction that materially alters control of the issuer without security holder approval (such as a private placement of voting securities) and without triggering the application of a shortened deposit period. Similarly, another commenter stated that it is unclear how the "alternative transaction" definition would apply to transactions that do not require security holder approval or how the definition distinguishes between a legitimate alternative transaction and a transaction that may be viewed as depriving offeree security holders of the ability to adequately respond to a take-over bid.</p> <p>One commenter proposed that clause (b) of the definition encompassing a transaction involving the acquisition of an issuer should be expanded to include the acquisition of the "business of the issuer". Another commenter suggested that clause</p>	<p>We thank the commenters for their input.</p> <p>We have not revised the definition of "alternative transaction" to include transactions that "affect materially" the control of the issuer if they are not otherwise already captured within the definition. We note, however, that a transaction initiated by an offeree board in the context of a take-over bid may, regardless of whether or not it is an "alternative transaction", still be subject to review under NP 62-202 depending on the circumstances.</p> <p>We agree with each of these comments and have made drafting changes to the definition of "alternative transaction" and related guidance in NP 62-203 in order to clarify the intended scope of the definition</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
		<p>(b) of the definition was duplicative and somewhat unclear given the existing scope of clause (a) and (c).</p> <p>One commenter noted that the purpose of the definition should cover all transactions that offeree security holders can effectively evaluate and compare the payment offered with the outstanding unsolicited bid.</p>	<p>and assist with the interpretation and application of the definition. In particular, we have removed clause (b) from the definition and have instead incorporated the substance of that former clause as guidance for the overall scope of the definition. Section 2.13 of NP 62-203 now states, in part, that the definition of "alternative transaction" is intended to encompass transactions agreed to or initiated by the issuer that could result in the acquisition of the issuer or the business of the issuer as an alternative to doing so by means of a take-over bid.</p>
3.	<p>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?</p>	<p>One commenter noted that the proposed policy guidance gives additional clarity.</p> <p>One commenter raised the issue that an existing offeror may have difficulty making a prompt decision as to whether its then-outstanding offer can be varied to accelerate the expiry date based on a news release by the offeree issuer announcing an alternative transaction. The commenter questions whether such a news release should contain the same specificity as that contemplated by a "deposit period news release". The commenter also suggested that consideration should be given as to whether an offeree issuer should be required to make a positive statement about the treatment of its announcement to avoid uncertainty in the market</p>	<p>We thank the commenters for their input.</p> <p>We believe that the proposed framework for "alternative transactions" strikes the most appropriate balance among offerors, offeree boards and offeree issuer security holders, while intending to be practical in application.</p> <p>We have, however, revised the guidance in NP 62-203 in light of comments. Since the "alternative transaction" provisions apply to the minimum deposit period for an offeror's bid, we believe that it is for an offeror to assess whether or not an</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
		<p>and for then-outstanding offerors.</p> <p>Two commenters noted that an announced transaction is either an "alternative transaction" or it is not and therefore the proposed policy guidance concerning reasonable interpretation or issuer disclosure is actually unhelpful.</p>	<p>issuer has entered into an "alternative transaction". As such, the guidance in section 2.14 of NP 62-203 now recommends that an offeror should reasonably determine whether an issuer's announced transaction is an "alternative transaction" before either reducing the initial deposit period of its outstanding take-over bid to not less than 35 days or commencing a take-over bid for the issuer with an initial deposit period of not less than 35 days, as the case may be.</p>
4.	<p>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.</p>	<p>All commenters who commented on this issue suggested that numerical examples would be helpful additions to the policy guidance.</p>	<p>We acknowledge these comments and have provided numerical examples in section 2.17 of NP 62-203.</p>
5.	<p>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 minimum</p>	<p>All commenters who responded to this question generally agreed with the revisions, particularly with respect to limiting withdrawal rights for securities deposited to a partial take-over bid.</p> <p>One commenter stated that it expects that the Proposed Bid Amendments may reduce the likelihood of successful partial take-over bids and thus discourage offerors from making partial take-over bids. Another commenter stated that partial take-over bids are likely to become even less common if the Proposed Bid Amendments are</p>	<p>We thank the commenters for their input.</p> <p>We did not make any changes to the Proposed Bid Amendments to address concerns regarding the possible inhibition of partial take-over bids, which we acknowledge will likely continue to be rare.</p>

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
	deposit period for so long as they are not taken up until the end of the mandatory 10 day extension period?	implemented.	
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?	<p>Three commenters noted that the current time limits set out in subsections 2.17(1) and (3) are reasonable.</p> <p>Two commenters noted that, while the time required for an offeree board to issue a directors' circular is not exactly the same as the corresponding deadline under U.S. law, its close proximity has proven convenient for inter-listed issuers and any consideration of a change should be mindful of cross-border coordination.</p> <p>Four commenters raised the concern that the 15 day period in subsection 2.17(1) may be too short, particularly given the 120 Day Requirement. Among these, one commenter suggested increasing the timeframe to 30 days, one commenter suggested increasing the timeframe to 28 days and one commenter suggested increasing the timeframe to the lesser of 30 days following the commencement of the bid, and 20 days prior to the end of the minimum deposit period.</p>	<p>We thank the commenters for their input.</p> <p>We did not make any changes to the current time limits set out in subsections 2.17(1) and (3). We believe that the current time limits will ensure that, regardless of the expiry date of any given bid, information relating to the offeree board's evaluation of the take-over bid will be provided in a timely manner to enable security holders to make fully informed decisions.</p>
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	Three commenters noted that they do not anticipate any significant changes to market activity or trading during a take-over bid as a result of the Proposed Bid Amendments. Among these, one	We thank the commenters for their input.

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
	<p>Bid Amendments? If so, please explain.</p>	<p>commenter noted that the extended timeframe to bid completion due to the 120 Day Requirement could result in a widening of the arbitrage discount on bids, particularly in situations where the market believes there is a relatively low probability of a competing bid.</p> <p>One commenter noted that if market participants wish to try to profit from price discrepancies or otherwise, they will likely continue to do so within the regulatory framework regardless of the final form of the Proposed Bid Amendments.</p> <p>One commenter remarked that it generally agrees with the expected impacts described in the 2015 Materials.</p>	

ANNEX C

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-1
(Section 149.1, *The Securities Act*)

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, merger, arrangement, consolidation, or any other transaction of the issuer, or an amendment to the terms of a class of equity securities 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, except to an extent that is nominal in the circumstances,

(ii) a circumstance in which the issuer may terminate 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 solely between or among the issuer and one or more subsidiaries of the issuer,

(b) a sale, lease or exchange of all or substantially all the property of the issuer if the sale, lease or exchange is not in the ordinary course of business of the issuer, but does not include a sale, lease or exchange solely between or among the issuer and one or more subsidiaries of the issuer;

(b) in the definition of "associate" by

(i) adding "or" at the end of paragraph (c), and

(ii) replacing paragraph (d) with:

(d) a relative of that person, if the relative has the same home as 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 partner; *and*

(c) by adding the following definitions:

"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 105 days and not less than 35 days, 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) a mandatory 10-day extension period, or

(b) any extension to the period during which securities may be deposited if the extension is made after a mandatory 10-day extension period;

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

"partial take-over bid" means a take-over bid for less than all of the outstanding securities 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:*

2.11(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

2.11(5) If, under subsection (1), an offeror is required to send a notice of change before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of change, and

(b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of change.

6. *Section 2.12 is amended*

(a) *in subsection (1) by adding "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" before "any extension",*

(b) *by adding the following subsections:*

2.12(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

2.12(3.1) If, under subsection (1), an offeror is required to send a notice of variation before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of variation, and

(b) the offeror must not take up securities deposited under the bid 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 from the waiver",

(d) in subsection (5) by replacing "A variation" with "An offeror must not make a variation", deleting "a take-over bid or", and deleting "must not be made", and

(e) by adding the following subsection:

2.12(6) An offeror must not make 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, 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 – 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 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.

2.26.1(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 by replacing "under a take-over bid or an issuer bid for" with "under an issuer bid for a minimum deposit period of".

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 105 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.

2.28.2(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 commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the deposit period news release referred to in subsection (1) and the bid has yet to expire;

(b) the offeror, after the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before 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 another take-over bid referred to in paragraph (a).

2.28.2(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 intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, 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 commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the news release and the bid has yet to expire;

(b) the offeror, after the issuance of the news release, commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:

(i) the date of completion or abandonment of the alternative transaction,

(ii) the date of expiry of another take-over bid 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:

Restriction 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 apply:

(a) a period of 105 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, has elapsed from the date of the bid;

(b) all the 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:

2.30(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 must not withdraw securities deposited before the expiry of the initial deposit period and 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 under either subsection 2.32.1(7) or (8) to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6),

(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 must not withdraw securities deposited",

(c) by adding the following paragraph after paragraph 2(a):

(a.1) in the case of a partial take-over bid, the securities were deposited before the expiry of the initial deposit period and 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

(i) replacing "one or both of the following circumstances occur" with "any of the following apply",

(ii) replacing "a variation in the terms of the bid" with "there is a variation in the terms of a take-over bid or issuer bid" in subparagraphs (i) and (ii), and

(iii) adding the following subparagraph:

(iii) in the case of a take-over bid, there is a variation in the terms after the expiry of the initial deposit period consisting of either an increase in the 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 replaced with the following:

2.31 If an offeror purchases securities under subsection 2.2(3), the purchased securities must not be counted in determining whether the minimum tender requirement in paragraph 2.29.1(c) is satisfied and the purchase does not reduce the number of securities the offeror is bound to take up under 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 take-over 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 at least 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 has been 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 will take up the deposited securities not later than one business day after the expiry of the mandatory 10-day extension period 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.

Time limit on extension – partial take-over bids

2.31.2 In the case of a partial take-over bid,

(a) the mandatory 10-day extension period must not exceed 10 days, and

(b) the bid must not be extended after the expiry of the mandatory 10-day extension period.

17. *Section 2.32 is amended*

(a) *in subsection (1) by deleting "a take-over bid or",*

(b) *in subsection (2) by*

i. deleting "a take-over bid or", and

ii. deleting "the" before "securities deposited",

(c) *in subsection (3) by*

i. deleting "a take-over bid or", and

ii. deleting "the" after "the deposit of",

(d) in subsection (4) by replacing "An offeror may not extend its take-over bid or" with "An offeror must not extend its",

(e) in subsection (5) by

i. deleting "a take-over bid or",

ii. deleting "only" before "required to take up", and

iii. adding "only" before "the maximum number of securities", and

(f) in subsection (6) by deleting "a take-over bid or".

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, all of the following apply:

(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 bid have been complied with or waived;

(c) the requirement in paragraph 2.29.1(c) is satisfied.

2.32.1(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.

2.32.1(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 made after the mandatory 10-day extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

2.32.1(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid beyond the expiry of the mandatory 10-day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

2.32.1(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 offeror must extend the bid without the offeror first taking up the securities which are subject to the rights of withdrawal.

2.32.1(6) Despite subsection (1), an offeror that has made a partial take-over bid is required to take up, by the time specified in that subsection, only 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.

2.32.1(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period and 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 business day after the expiry of the mandatory 10-day extension period.

2.32.1(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 and 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 business day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

19. *Section 6.1 is replaced with the following:*

6.1(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

6.1(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

6.1(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 Definitions opposite the name of the local jurisdiction.

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

6.2(2) Despite subsection (1), in Ontario, only the regulator may make such a decision.

21. *Section 7.1 is replaced with the following:*

7.1 The take-over bid or issuer bid provisions in securities legislation that were in force immediately before May 9, 2016, continue to apply in respect of

(a) every take-over bid and issuer bid commenced before May 9, 2016,

(b) any take-over bid in respect of the securities of an offeree issuer subject to a take-over bid referred to in paragraph (a) commenced on or subsequent to May 9, 2016 and prior to the date of the expiry of a take-over bid referred to in paragraph (a), and

(c) any take-over bid in respect of the securities of an issuer that issued a news release before May 9, 2016 announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, commenced on or subsequent to May 9, 2016 and prior to the date of completion or abandonment of the alternative transaction.

22. *Section 7.2 is amended*

(a) *by renumbering it as subsection 7.2(1) and by replacing "This" with "Except in Ontario, this", and*

(b) *by adding the following subsection:*

7.2(2) In Ontario, this Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force..

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

24. 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 minimum period of 10 days to allow for further deposits of securities.

25. Form 62-104F2 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.

26. Form 62-104F3 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.

27. Form 62-104F4 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.

28. Form 62-104F4 is amended by replacing "revision" with "revisions" in item 14.

29. Form 62-104F5 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.

30. 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,

31. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

32. This Instrument may be cited as MSC Rule 2016-1.

ANNEX D

BLACKLINE EXTRACTS SHOWING AMENDMENTS TO MI 62-104

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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, merger, arrangement, consolidation, or any other transaction of the issuer, or an amendment to the terms of a class of equity securities 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, except to an extent that is nominal in the circumstances,
 - (ii) a circumstance in which the issuer may terminate 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 solely between or among the issuer and one or more subsidiaries of the issuer,
- (b) a sale, lease or exchange of all or substantially all the property of the issuer if the sale, lease or exchange is not in the ordinary course of business of the issuer, but does not include a sale, lease or exchange solely between or among the issuer and one or more subsidiaries 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, if the relative has the same home as 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 partner if 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 105 days and not less than 35 days, 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) a mandatory 10-day extension period, or

(b) any extension to the period during which securities may be deposited if the extension is made after 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 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 outstanding securities 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 if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

(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, under subsection (1), an offeror is required to send a notice of change before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of change, and

(b) the offeror must not take up securities deposited under the bid 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 any 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 if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

(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, under subsection (1), an offeror is required to send a notice of variation before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of variation, and

(b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of variation.

(4) Subsections (1) ~~and~~, (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) ~~An offeror must not make 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.

[\(6\) An offeror must not make 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, 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 – 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 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.

(42) 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 105 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 commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the deposit period news release referred to in subsection (1) and the bid has yet to expire;
- (b) the offeror, after the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before 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 another 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 intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, 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 commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the news release and the bid has yet to expire;
- (b) the offeror, after the issuance of the news release, commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:
 - (i) the date of completion or abandonment of the alternative transaction,
 - (ii) the date of expiry of another take-over bid referred to in paragraph (a).

Prohibition ~~Restriction~~ 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.

Restriction 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 apply:

- (a) a period of 105 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, has elapsed from the date of the bid;
- (b) all the 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 must not withdraw securities deposited before the expiry of the initial deposit period and 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 under either subsection 2.32.1(7) or (8) to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6).

(2) ~~The right of withdrawal under~~ Despite paragraph (1)(b) ~~does not apply, a security holder must not withdraw securities deposited~~ 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 before the expiry of the initial deposit period and 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; apply:~~
 - (i) there is 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) there is 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) in the case of a take-over bid, there is a variation in the terms after the expiry of the initial deposit period consisting of either an increase in the 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~~ under subsection 2.2(3), ~~those~~ the 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 must~~ the minimum tender requirement in paragraph 2.29.1(c) is satisfied and the purchase does 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 take-over 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 at least 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 has been 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 will take up the deposited securities not later than one business day after the expiry of the mandatory 10-day extension period 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.

Time limit on extension – partial take-over bids

2.31.2 In the case of a partial take-over bid,

(a) the mandatory 10-day extension period must not exceed 10 days, and

(b) the 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~~**must** 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, **only** 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, all of the following apply:

(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 bid have been complied with or waived;

(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 made after the mandatory 10-day 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 beyond 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 offeror must extend the bid 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 required to take up, by the time specified in that subsection, only 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 and 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 business 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 and 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 business 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 ~~grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.~~

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

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted 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.~~

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.

PART 7: TRANSITION AND COMING INTO FORCE

Transition

7.1 The take-over bid or issuer bid provisions in securities legislation that were in force immediately before ~~the effective date of this Instrument,~~May 9, 2016, continue to apply in respect of

- (a) every take-over bid and issuer bid commenced before ~~the effective date of this Instrument,~~May 9, 2016,
- (b) any take-over bid in respect of the securities of an offeree issuer subject to a take-over bid referred to in paragraph (a) commenced on or subsequent to May 9, 2016 and prior to the date of the expiry of a take-over bid referred to in paragraph (a), and
- (c) any take-over bid in respect of the securities of an issuer that issued a news release before May 9, 2016 announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, commenced on or subsequent to May 9, 2016 and prior to the date of completion or abandonment of the alternative transaction.

Coming into force

7.2 ~~This~~Except in Ontario, this Instrument comes into force on February 1, 2008. In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;
- (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX E

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

1. *National Policy 62-203 Take-Over Bids and Issuer Bids is changed by this document.*
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:*
 7. **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 105 days (section 2.28.1 of the Instrument), except in the following circumstances:
 - (a) the offeree issuer states in a news release a shorter deposit period for a bid of not less than 35 days (section 2.28.2 of the Instrument); or
 - (b) the issuer issues a news release that it intends to effect a specified alternative transaction (section 2.28.3 of the Instrument).
 8. 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 expiry date for the initial deposit period based on the number of days specified for the bid referred to 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 a minimum initial deposit period of at least 35 days. This provision applies regardless of the length of time that may be required to complete the alternative transaction.

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 of not more than 105 days and not less than 35 days. A deposit period news release must describe the 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 minimum initial deposit period for a take-over bid or determines to state a shorter initial minimum deposit period for a take-over bid after it had previously stated an initial minimum 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 minimum 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** – The Bid Regime includes a definition for an "alternative transaction" that is based, with certain modifications, principally on the definition of "business combination" in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*. This definition is intended to encompass transactions agreed to or initiated by the issuer that could result in the acquisition of the issuer or the business of the issuer as an alternative to doing so by means of a take-over bid.

- 2.14 Alternative transaction – time of agreement** – 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 "intends to effect an alternative transaction, whether pursuant to an agreement or otherwise". 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.

- 2.15 Alternative transaction – reliance on issuer news release** – Section 2.28.3 of the Instrument provides for the reduction of the minimum initial deposit period for a take-over bid to 35 days if an issuer issues a news release announcing that it intends to effect an alternative transaction. Section 2.28.3 applies in respect of an offeror's take-over bid, such that an offeror should reasonably determine whether an issuer's announced

transaction is an "alternative transaction" before either, as the case may be, reducing the initial deposit period of its outstanding take-over bid to not less than 35 days or commencing a take-over bid for the issuer with an initial deposit period of not less than 35 days.

2.16 Change in information or variation of terms – Subsections 2.11(5) and 2.12(3.1) of the Instrument provide that the initial deposit period for a take-over bid must not expire before 10 days after the date of a notice of change or notice of variation, respectively. If an offeror is required to send a notice of change or a notice of variation in circumstances where the initial deposit period would expire less than 10 days from the date of the notice 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.

2.17 Partial take-over bids – The Bid Regime includes specific requirements for partial take-over bids, including that an offeror is required to take up securities deposited on a proportionate or *pro rata* basis where a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire. The Bid Regime exempts 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 subsection 2.32.1(1) of the Instrument are satisfied. Instead, subsection 2.32.1(6) of the Instrument provides that the offeror is required to take up at the expiry of the initial deposit period only the maximum number of securities that it can without contravening the *pro rata* requirement. An offeror would therefore make the determination of the maximum number of securities it can take up assuming that all other securities subject to the bid will be deposited during the mandatory 10-day extension period.

Subsection 2.32.1(7) of the Instrument further requires 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 s. 2.32.1(6), and securities deposited during the mandatory 10-day extension period, on a *pro rata* basis and not later than one business day after expiry of the mandatory 10-day extension period. This *pro rata* determination would take into account the fact that a portion of the securities deposited in the initial deposit period has already been taken up by the offeror.

The following are illustrative examples of how the proportionate take-up provisions in the Bid Regime would apply to partial take-over bids in different circumstances.

Partial take-over bid scenario	Offeree shares deposited as at expiry of initial deposit period (all other conditions satisfied)	Maximum number of offeree shares taken up <i>pro rata</i> by offeror at expiry of initial deposit period	Additional offeree shares deposited during mandatory 10-day extension period	Total offeree shares taken up at expiry of mandatory 10-day extension period
Bid for 3,000 offeree shares (30% of 10,000 issued and outstanding offeree shares) Offeror does not own offeree	6,000 (60% of the 10,000 offeree shares subject to the bid) (minimum 50% tender is required to	1,800 (60% of 3,000 offeree shares bid for, or 30% of 6,000 shares deposited) Offeror cannot take-up more than 60% of the 3,000	2,000 (20% of the 10,000 offeree shares subject to the bid)	3,000 (30% of 10,000 issued and outstanding offeree shares) <i>Summary</i> A total of 8,000 (80%) of the offeree shares subject to the bid deposited as at expiry of the mandatory 10-day extension period (6,000 as at expiry

shares at commencement of bid and does not acquire offeree shares during the bid.	meet minimum tender requirement in s. 2.29.1(c))	shares it bid for (30% of deposited shares) to allow for possibility of additional deposit of all 4,000 (40%) remaining shares subject to the bid during mandatory 10-day extension period.		of initial deposit period plus 2,000 deposited during mandatory 10-day extension period). Proration factor: 3,000 / 8,000 (number of shares sought / number of shares tendered) = approx. 0.375. The offeror will take up and pay for 37.5% of shares deposited by each shareholder, taking into account any shares already taken up at expiry of initial deposit period.
Bid for 3,000 offeree shares (30% of 10,000 issued and outstanding offeree shares) in addition to shares held by offeror Offeror owns 1,000 (10%) of offeree shares at commencement of bid and does not acquire offeree shares during the bid.	6,000 (66 ² / ₃ % of the 9,000 offeree shares subject to the bid) (minimum 50% tender of the 9,000 offeree shares not held by offeror (or 4,500 shares) is required to meet minimum tender requirement in s. 2.29.1(c))	2,000 (66 ² / ₃ % of 3,000 offeree shares bid for, or 33 ¹ / ₃ % of 6,000 shares deposited) Offeror cannot take-up more than 66 ² / ₃ % of the 3,000 offeree shares it bid for to allow for possibility of additional deposit of all 3,000 (33 ¹ / ₃ %) remaining shares subject to the bid during mandatory 10-day extension period.	2,000 (approx. 22% of the 9,000 offeree shares subject to the bid)	3,000 (30% of 10,000 issued and outstanding offeree shares) <i>Summary</i> A total of 8,000 (80%) of offeree shares subject to the bid deposited as at expiry of the mandatory 10-day extension period (6,000 as at expiry of initial deposit period plus 2,000 deposited during mandatory 10-day extension period). Pro ration factor: 3,000 / 8,000 (number of shares sought / number of shares deposited) = approx. 0.375. The offeror will take up and pay for 37.5% of shares deposited by each shareholder, taking into account any shares already taken up at expiry of initial deposit period.

7. Except in Ontario, these changes become effective on May 9, 2016. In Ontario, these changes become effective on the later of the following:
- (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX F

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-2
 (Section 149.1, *The Securities Act*)

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

- (a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

4. This Instrument may be cited as MSC Rule 2016-2.

ANNEX G

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-3
(Section 149.1, *The Securities Act*)

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

4. This Instrument may be cited as MSC Rule 2016-3.

ANNEX H

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-4
(Section 149.1, *The Securities Act*)

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.
5. This Instrument may be cited as MSC Rule 2016-4.

ANNEX I
THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-5
(Section 149.1, *The Securities Act*)

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:
 - (a) May 9, 2016;
 - (b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.
4. This Instrument may be cited as MSC Rule 2016-5.

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

1. Companion Policy 55-104CP Insider Reporting Requirements and Exemptions is changed by this document.

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. Except in Ontario, these changes become effective on May 9, 2016. In Ontario, these changes become effective on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX K

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX L

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

1. *Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is changed by this document.*

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

ANNEX M

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-6
(Section 149.1, *The Securities Act*)

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", and*

(f) *by adding the following definition:*

"NI 62-104" means National Instrument 62-104 *Take-Over Bids and Issuer Bids*;.

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. Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force on the later of the following:

(a) May 9, 2016;

(b) the day on which sections 1, 2 and 3, subsections 4 (2) and (3), and sections 5, 7, 8 and 10 of Schedule 18 of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

5. This Instrument may be cited as MSC Rule 2016-6.