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# For The Times They Are A-Changin: Canadian Regulators Adopt Fundamental Changes to the Take-over Bid Regime

The Canadian Securities Administrators (CSA) have adopted amendments to Canada's take-over bid regime which will take effect on May 9, 2016.[1] These fundamental changes will provide boards of directors of target companies with more time and more leverage to respond to unsolicited bids, establish a majority acceptance standard for bids and impose a mandatory extension period to relieve concerns that target shareholders may be coerced into tendering to a bid out of a concern of being left holding securities in a closely held company with significantly less liquidity.

The following is a summary of the changes for all non-exempt take-over bids:

- **50% Minimum tender condition**. The bidder must receive tenders of at least 50% of the outstanding securities subject to the bid prior to taking up any securities.
- **Mandatory 10-day extension**. The bidder will be required to extend the deposit period for a minimum of 10 days once the 50% minimum tender condition has been met.
- **105-day minimum deposit period, subject to certain exceptions**. All take-over bids will be required to remain open for a minimum of 105 days, unless:

[1] The amendments will take effect in all Canadian jurisdictions except Ontario on May 9, 2016 and, in Ontario, on the later of May 9, 2016 and the day that certain sections of the *Budget Measures Act, 2015* (Ontario) are proclaimed into force.

- the target board agrees to a shorter deposit period of not less than 35 days (which reduced period will apply to all competing bids), or
- the target company announces that it intends to effect a specified alternative transaction, in which case all contemporaneous take-over bids will have their initial tender period reduced to 35 days.

These changes will provide boards of target companies with considerably more time to seek alternatives to an unsolicited bid and heighten the risk to the bidder of an interloping bid being made. This is expected to reduce the frequency of hostile bids and increase the level of engagement between potential bidders and target companies.

Similar to the provisions included in most shareholders' rights plans, the majority approval requirement through the minimum tender condition will prevent the practice followed by many bidders of electing to waive a minimum tender condition in order to acquire a significant (albeit less than a majority) ownership position and thereby be in a position to block future change of control transactions.

The mandatory minimum 10-day extension requires bidders to publicly disclose by news release: (i) that the minimum tender condition has been met, (ii) that all other bid conditions have been satisfied or waived, (iii) the number of securities deposited to the bid at the expiry of the initial deposit period, and (iv) that the period during which securities may be deposited under the bid has been extended (which must be for at least 10 days). This will allow undecided target securityholders additional time to accept the bid with the benefit of the knowledge that a majority of their peers have already done so.

Of note, the take-over bid amendments do not make any changes to National Policy 62-202 *Take-Over Bids – Defensive Tactics*, which allows target boards to continue using shareholders' rights plans to restrict a bidder's ability to acquire the target's securities by way of exempt take-over bids such as a creeping take-overs and private agreement purchases. We expect that the circumstances in which the regulators would permit a shareholders' rights plan to continue beyond 105 days would be very limited.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.