

June 29, 2015

BY E-MAIL

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

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 2S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec
H4Z 1G3

Dear Sirs/Mesdames:

Re: Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and National Policy 62-203 *Take-Over Bids and Issuer Bids*

We are pleased to have the opportunity to comment on the proposed changes to the Canadian take-over bid regime, as set out in the CSA Notice and Request for Comment dated March 31, 2015.

We recognize that a uniform approach to the regulation of take-over bids among the Canadian jurisdictions is essential, and we view the latest proposals as constituting a reasonable compromise between the two positions put forward by the Canadian Securities Administrators and the Autorité des marchés financiers in March 2013. We particularly favour the “Minimum Tender Requirement” and the

“10 Day Extension Requirement”, as they will remove the coercive aspect of take-over bids. In fact, those two requirements might logically be applied to issuer bids that are used as the first step by a control person or management to take an issuer private or to solidify a control position, although the rarity of those occurrences in recent years militates against increasing the complexity of the instrument to provide for them.

The “120 Day Requirement” is an improvement over the existing 35-day mandatory take-over bid period which is insufficient for many targets to adequately respond to unsolicited bids, although we believe that the imposition of the requirement will reduce the level of hostile bid activity, perhaps substantially. Potential bidders that are not completely deterred by the requirement will be more likely to negotiate with the target so as to reduce the bid period, thereby lessening bid financing costs in some cases and possibly decreasing the likelihood of the emergence of competing bidders. While the negotiation process will often result in a beneficial result for security holders, a shorter period, such as the 90 days in the previous CSA proposal for security holder rights plans, would have served as a somewhat lesser deterrent to hostile bids and struck a more even-handed balance between bidder and target, particularly in combination with the Minimum Tender and 10 Day Extension requirements.

The proposals do not address inconsistencies among the securities regulatory authorities in their application of National Policy 62-202 *Take-Over Bids – Defensive Tactics*, in particular with respect to the weight to be given to the approval of a defensive tactic such as a security holder rights plan by the target’s security holders during a hostile bid. We note that National Policy 62-202 continues to include the statement “Prior shareholder approval of corporate action would, in appropriate cases, allay such concerns.” Some additional policy guidance on this subject would be helpful.

Our specific comments on the proposed amendments to National Instrument 62-104 are set out below:

Section 1.1 Definitions –

“alternative transaction”:

In the definition of “alternative transaction”, the reason for the inclusion of subparagraph (a)(iii) is unclear to us. A transaction under which an issuer’s equity securities are expropriated could affect the holders of those securities in a manner analogous to a take-over bid followed by a squeeze-out or second step acquisition even if the transaction involved a subsidiary of the issuer. If the subparagraph were to remain, consideration might be given to confining its application to a wholly-owned subsidiary.

Consideration might also be given to including in the definition an issuer bid for equity securities of the issuer, unless the issuer bid is exempt from Part 2 of the Instrument or from the formal valuation requirement in section 3.3 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

“partial bid”:

We suggest that the words “not held by the offeror” be added to the definition.

Section 2.12 Variation of terms

In subsection (4), consider deleting the words “and any extension of the bid, other than an extension in respect of the mandatory 10 day extension period, resulting from the waiver”. Since the subsection exempts the bidder from the requirement to extend under the circumstances described, it does not appear that there would be an extension “resulting” from the waiver (other than the mandatory 10 day extension period which is covered by section 2.31.1, rather than section 2.12).

Section 226.1 Proportionate take up and payment – partial take-over bids

Consider making the wording consistent with subsection 2.26(1), i.e. “bound to acquire” vs. “bound or willing to acquire”.

Section 2.28.2 Shortened deposit period – deposit period news release

In paragraph (2)(b), for added clarity we suggest either deleting “and the bid is made” or changing “made” to “commenced”.

Section 2.28.3 Shortened deposit period – alternative transaction

In paragraph (b), we suggest the same change as in section 2.28.2 above.

In the draft of the amending instrument (section 11 of that instrument), the word “bid” is missing from subparagraph (b)(ii).

Section 2.30 Withdrawal of Securities

While most readers of subsections (1.1) and (2) are likely to understand that those subsections only prescribe exceptions to paragraphs (1)(a) and (1)(b), respectively (and do not otherwise remove withdrawal rights), it may provide greater clarity to maintain the current introductory wording of subsection (2) and use similar wording in subsection(1.1).

In paragraph 14(c) of the draft amending instrument, we suggest adding “after paragraph (2)(a)” to the introductory words.

In subparagraph (2)(b)(i), it might be clarified that the 10-day limit applies only to the initial deposit period.

Section 231.1 Mandatory 10 day extension period – take-over bids

In clause (b)(iv)(B), consider deleting “and in any event”, inserting “business” before “day” and including the 3 business day payment requirement as in clause (b)(iv)(A).

Section 232.1 Obligation to take up and pay for deposited securities – take-over bids

In subsection (4), we suggest changing “at any time subsequent to” to “beyond” or “to a date that is after”.

In subsections (7) and (8), consider inserting “business” before “day”.

We have one comment on the proposed changes to National Policy 62-203:

Section 2.15 Change in Information

Consider having this section also cover a variation of the terms of a bid, with reference to subsection 212(3.1) of the Instrument.

Thank you for considering these comments. Any questions or comments regarding this submission may be directed to Ralph Shay at ralph.shay@dentons.com or 416-863-4419.

Yours truly,

“Dentons Canada LLP”