

Note: [09 May 2016] – Changes to NP 62-203. Refer to Annex E of the CSA Notice announcing amendments to MI 62-104 dated 25 Feb 2016.

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:***
 - 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).**

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 shares at commencement of bid and does not acquire offeree	6,000 (60% of the 10,000 offeree shares subject to the bid) (minimum 50% tender is required to meet minimum tender requirement in s. 2.29.1(c))	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 shares it bid for (30% of deposited shares) to allow for possibility of additional	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 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

shares during the bid.		deposit of all 4,000 (40%) remaining shares subject to the bid during mandatory 10-day extension period.		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 ($66\frac{2}{3}\%$ 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 ($66\frac{2}{3}\%$ of 3,000 offeree shares bid for, or $33\frac{1}{3}\%$ of 6,000 shares deposited) Offeror cannot take-up more than $66\frac{2}{3}\%$ of the 3,000 offeree shares it bid for to allow for possibility of additional deposit of all 3,000 ($33\frac{1}{3}\%$) 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.