

## Corporate Securities Law

April 1, 2015

### Amendments Proposed to Significantly Change Take-Over Bid Rules

The Canadian Securities Administrators (CSA) yesterday published for comment proposed amendments to the Canadian take-over bid regime that, if implemented, would significantly change the dynamics, timeline and processes for contested take-over bids.

#### Overview

The key elements of the new proposals would materially change the way unsolicited take-over bid transactions occur in Canada by (i) significantly lengthening the minimum deposit period to 120 days, subject to abridgment in certain circumstances, thereby providing target boards with much more time to respond to an unsolicited bid, including by seeking alternatives or convincing shareholders to reject the bid, and (ii) imposing requirements, specifically a minimum 50% tender condition and a requirement to extend the bid for at least ten days once the bid conditions are met, which will reduce the potential for coercive bids. These changes would effectively impose, as a minimum statutory standard for take-over bids in Canada, an enhanced form of the “permitted bid” concept commonly included in shareholder rights plans adopted by Canadian public companies.

The proposals are substantially based on the concepts announced on September 11, 2014 (see our September 12, 2014 Update, *CSA Propose Different Direction for Take-Over Bid Regime*). The 90-day comment period on the proposed amendments ends on June 29, 2015.

#### The Proposals

The CSA’s proposed amendments to the take-over bid regime would impose the following requirements for all non-exempt take-over bids:

- *Mandatory Minimum Tender Requirement.* All bids would be subject to a minimum tender requirement, under which more than 50% of all outstanding target securities subject to the bid owned or held by persons other than the bidder and its joint actors would need to be tendered and not withdrawn before the bidder can take up any securities under the bid. The adoption of a requirement that a majority of independent securityholders accept a bid would mitigate the pressure to tender that can arise under the current framework, where a bidder can waive a bid without a minimum tender condition impelling securityholders to tender lest they be left holding securities of a controlled issuer.
- *Mandatory Deposit Period After Satisfaction of Minimum Tender Condition.* All bids would have to be extended for 10 days if, after the expiry of the initial deposit period, the minimum tender requirement is satisfied and all terms of the bid have been complied with or waived. The bidder would be required to issue and file a news release, with specified information, concurrent with the commencement of the mandatory 10-day extension period. This requirement too would mitigate the pressure to tender in circumstances where target securityholders have to make tender decisions without knowing what other securityholders have done and whether the bid will proceed.
- *Minimum 120-Day Bid Period (Unless Abridged by the Target).* All bids would have to remain open for at least 120 days unless the target board agrees (in a non-discriminatory manner, when there are multiple bids) to a minimum period of at least 35 days or the target issues a news release announcing that it has agreed to enter into certain alternative transactions.

# Goodmans<sup>LLP</sup> Update

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The proposed amendments also include additional and consequential technical changes to related aspects of the take-over bid regime, including the rules governing variations to bid terms, changes in information, and the mechanics and processes for take-up and payment for shares and withdrawal rights.

Please contact any member of our Corporate Securities Group to discuss the implications of these amendments.