

Corporate Securities Law

May 9, 2016

New Takeover Bid and Early Warning Rules Take Effect Today

The much-discussed amendments to Canada's takeover bid regime (the "**Takeover Amendments**"), as well as concurrent amendments to Canada's early warning regime (the "**Early Warning Amendments**"), came into force today (May 9, 2016).

The Takeover Amendments

As noted in our February 25, 2016 Update, *Amendments to Takeover Bid Rules Alter Canada's M&A Landscape*, the main elements of the Takeover Amendments are:

- *Minimum Tender Condition.* The Takeover Amendments require that all non-exempt takeover bids meet a minimum tender requirement of more than 50% of the outstanding securities that are subject to the bid and held by disinterested securityholders. This requirement applies equally to partial bids, making them more challenging for bidders.
- *Minimum Bid Period.* The Takeover Amendments require a minimum deposit period of 105 days. Shorter minimum periods are permitted, to as low as 35 days, at the target board's discretion or if the target enters into an alternative transaction, such as a plan of arrangement.
- *Mandatory Extension.* The minimum deposit period must be extended by a minimum of 10 days after the minimum tender requirement and all other conditions are met.

As discussed in greater detail in our March 1, 2016 Article, *Takeovers Get a Makeover - A Guide to the New Takeover Bid Regime in Canada*, the Takeover Amendments are expected to have a significant impact on the M&A landscape in Canada. In particular, as we note in our May 9, 2016 Article, *The Role of Private Placements in Canada's New Take-over Bid Regime*, while the

effectiveness of some defensive tactics, such as the traditional poison pill, may be circumscribed, other defensive tactics, such as private placements into friendly hands, could become more prevalent.

The Early Warning Amendments

As noted in our February 26, 2016 Update, *CSA Adopt Amendments to the Early Warning Regime*, the Early Warning Amendments:

- require disclosure where ownership, control or direction of a person required to report under the regime decreases by 2% or falls below the 10% reporting threshold;
- preclude institutional investors who solicit proxies from securityholders in some circumstances from relying on the alternative monthly reporting system;
- do not require disclosure by lenders of shares pursuant to a specified securities lending arrangement or by borrowers of shares, in certain circumstances, under a securities lending arrangement;
- provide guidance regarding the circumstances in which an investor may be required to include certain derivatives in the early warning threshold calculation; and
- enhance disclosure by (i) requiring more detailed information regarding the intentions of the acquiror and the purpose of the transaction in early warning reports, (ii) requiring the early warning report to be certified and signed, (iii) permitting a news release filed in connection with an early warning report to reference that report for certain details, and (iv) clarifying that early warning news releases must be issued and filed no later than the opening of trading on the next business day.

Please contact any member of our Corporate Securities Group to discuss the Takeover Amendments, the Early Warning Amendments, defensive tactics or other matters relating to public M&A generally.