

Corporate Securities Law

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CSA Propose Different Direction for Take-Over Bid Regime

The Canadian Securities Administrators (CSA), including the Autorité des marchés financiers (AMF), announced yesterday that they will not be proceeding with defensive tactics proposals published by the CSA and the AMF last year (see our March 15, 2013 Update, *Canadian Securities Regulators Propose New Regimes for Shareholder Rights Plans*) and instead have determined to implement a new, harmonized regulatory proposal involving amendments to the take-over bid regime.

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 Condition.* All bids would be subject to a mandatory condition that more than 50% of all outstanding target securities owned or held by persons other than the bidder and its joint actors be tendered and not withdrawn before the bidder can take up any securities under the bid.
- *Mandatory Deposit Period After Satisfaction of Minimum Tender Condition.* All bids would have to be extended for 10 days after the bidder achieves the mandatory minimum tender condition and announces its intention to immediately take up and pay for the securities deposited under the bid (to provide non-tendering shareholders with an opportunity to tender once it's clear that the bid is proceeding).

- *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 agreed (in a non-discriminatory manner when there are multiple bids) to a minimum period of at least 35 days.

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 CSA has indicated that it is not contemplating any amendments to the current take-over bid exemptions or National Policy 62-202 *Defensive Tactics*.

Consequently, we expect shareholder rights plans would continue to serve to, among other things, preclude "creeping" acquisitions by bidders relying on existing take-over bid exemptions.

The CSA expect to publish the proposed amendments for comment in the first quarter of 2015. We expect those comments may focus on, among other things, how the 120-day minimum bid period will affect the potential use of compulsory acquisition rights under Canadian corporate statutes (some of which are dependent on the offeror acquiring 90% of the shares that it and its affiliates did not own before the bid within 120 days of the bid).

For further information on these proposals, please contact any member of our Corporate Securities Group.