

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2016-1
(Section 149.1, *The Securities Act*)

AMENDMENTS TO
MULTILATERAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS

1. *Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.*
2. *The title of the Instrument is replaced with "National Instrument 62-104 Take-Over Bids and Issuer Bids".*
3. *Section 1.1 is amended*

(a) by adding the following definition:

"alternative transaction" means, for an issuer:

(a) an amalgamation, merger, arrangement, consolidation, or any other transaction of the issuer, or an amendment to the terms of a class of equity securities of the issuer, as a consequence of which the interest of a holder of an equity security of the issuer may be terminated without the holder's consent, regardless of whether the equity security is replaced with another security, but does not include

(i) a consolidation of securities that does not have the effect of terminating the interests of holders of equity securities of the issuer in those securities without their consent, except to an extent that is nominal in the circumstances,

(ii) a circumstance in which the issuer may terminate a holder's interest in a security, under the terms attached to the security, for the purpose of enforcing an ownership or voting constraint that is necessary to enable the issuer to comply with legislation, lawfully engage in a particular activity or have a specified level of Canadian ownership, or

(iii) a transaction solely between or among the issuer and one or more subsidiaries of the issuer,

(b) a sale, lease or exchange of all or substantially all the property of the issuer if the sale, lease or exchange is not in the ordinary course of business of the issuer, but does not include a sale, lease or exchange solely between or among the issuer and one or more subsidiaries of the issuer;

(b) in the definition of "associate" by

(i) adding "or" at the end of paragraph (c), and

(ii) replacing paragraph (d) with:

(d) a relative of that person, if the relative has the same home as that person, including

(i) the spouse or, in Alberta, adult interdependent partner of that person, or

(ii) a relative of the person's spouse or, in Alberta, adult interdependent partner; *and*

(c) by adding the following definitions:

"deposit period news release" means a news release issued by an offeree issuer in respect of a proposed or commenced take-over bid for the securities of the offeree issuer and stating an initial deposit period for the bid of not more than 105 days and not less than 35 days, expressed as a number of days from the date of the bid;

"initial deposit period" means the period, including any extension, during which securities may be deposited under a take-over bid but does not include

(a) a mandatory 10-day extension period, or

(b) any extension to the period during which securities may be deposited if the extension is made after a mandatory 10-day extension period;

"mandatory 10-day extension period" means the period referred to in paragraph 2.31.1(a);

"partial take-over bid" means a take-over bid for less than all of the outstanding securities of the class of securities subject to the bid;

4. *Subsection 1.11(3) is amended by adding "and subsection 4.8(3)" after "section 4.1".*

5. *Section 2.11 is amended by adding the following subsections:*

2.11(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of change to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

2.11(5) If, under subsection (1), an offeror is required to send a notice of change before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of change, and

(b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of change.

6. *Section 2.12 is amended*

(a) *in subsection (1) by adding "any reduction of the period during which securities may be deposited under the bid pursuant to section 2.28.2 or section 2.28.3, or" before "any extension",*

(b) *by adding the following subsections:*

2.12(1.1) Despite paragraph (1)(b), an offeror is not required to send a notice of variation to a security holder if, under paragraph 2.30(2)(a.1), the security holder is restricted from withdrawing securities that have been deposited under the bid.

2.12(3.1) If, under subsection (1), an offeror is required to send a notice of variation before the expiry of the initial deposit period

(a) the initial deposit period for the offeror's take-over bid must not expire before 10 days after the date of the notice of variation, and

(b) the offeror must not take up securities deposited under the bid before 10 days after the date of the notice of variation.,

(c) in subsection (4) by replacing "and (3)" with ", (3) and (3.1)" and adding ", other than an extension in respect of the mandatory 10-day extension period," before "resulting from the waiver",

(d) in subsection (5) by replacing "A variation" with "An offeror must not make a variation", deleting "a take-over bid or", and deleting "must not be made", and

(e) by adding the following subsection:

2.12(6) An offeror must not make a variation in the terms of a take-over bid, other than a variation to extend the time during which securities may be deposited under the bid or a variation to increase the consideration offered for the securities subject to the bid, after the offeror becomes obligated to take up securities deposited under the bid in accordance with section 2.32.1.

7. Subsection 2.17(3) is amended by replacing "period during which securities may be deposited under the bid" with "initial deposit period".

8. Section 2.26 is amended

(a) in subsection (1) by deleting "a take-over bid or", and

(b) by repealing subsection (4).

9. The Instrument is amended by adding the following section:

Proportionate take up and payment – take-over bids

2.26.1(1) If a greater number of securities is deposited under a partial take-over bid than the offeror is bound or willing to acquire under the bid, the offeror must take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder.

2.26.1(2) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 2.4(1) applies are deemed to have been deposited under the take-over bid by the person who was the seller in the pre-bid transaction.

10. Section 2.28 is amended by replacing "under a take-over bid or an issuer bid for" with "under an issuer bid for a minimum deposit period of".

11. The Instrument is amended by adding the following sections:

Minimum deposit period – take-over bids

2.28.1 An offeror must allow securities to be deposited under a take-over bid for an initial deposit period of at least 105 days from the date of the bid.

Shortened deposit period – deposit period news release

2.28.2(1) Despite section 2.28.1, if at or after the time an offeror announces a take-over bid, the offeree issuer issues a deposit period news release in respect of the offeror's take-over bid, the offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release.

2.28.2(2) Despite section 2.28.1, an offeror, other than an offeror under subsection (1), must allow securities to be deposited under its take-over bid for an initial deposit period of at least the number of days from the date of the bid as stated in the deposit period news release if either of the following applies:

(a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the deposit period news release referred to in subsection (1) and the bid has yet to expire;

(b) the offeror, after the issuance of the deposit period news release referred to in subsection (1), commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:

(i) the date of expiry of the take-over bid referred to in subsection (1),

(ii) the date of expiry of another take-over bid referred to in paragraph (a).

2.28.2(3) For the purposes of subsections (1) and (2), an offeror must not allow securities to be deposited under its take-over bid for an initial deposit period of less than 35 days from the date of the bid.

Shortened deposit period – alternative transaction

2.28.3 Despite section 2.28.1, if an issuer issues a news release announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, an offeror must allow securities to be deposited under its take-over bid for an initial deposit period of at least 35 days from the date of the bid if either of the following applies:

(a) the offeror commenced the take-over bid in respect of securities of the offeree issuer before the issuance of the news release and the bid has yet to expire;

(b) the offeror, after the issuance of the news release, commences a take-over bid in respect of securities of the offeree issuer and the bid is commenced before one of the following:

(i) the date of completion or abandonment of the alternative transaction,

(ii) the date of expiry of another take-over bid referred to in paragraph (a).

12. Section 2.29 is amended by deleting "a take-over bid or".

13. The Instrument is amended by adding the following section:

Restriction on take up – take-over bids

2.29.1 An offeror must not take up securities deposited under a take-over bid unless all of the following apply:

(a) a period of 105 days, or the number of days determined in accordance with section 2.28.2 or section 2.28.3, has elapsed from the date of the bid;

(b) all the terms and conditions of the bid have been complied with or waived;

(c) more than 50% of the outstanding securities of the class that are subject to the bid, excluding securities beneficially owned, or over which control or direction is exercised, by the offeror or by any person acting jointly or in concert with the offeror, have been deposited under the bid and not withdrawn.

14. Section 2.30 is amended

(a) by adding the following subsection:

2.30(1.1) Despite paragraph (1)(a), if an offeror that has made a partial take-over bid becomes obligated to take up securities under subsection 2.32.1(1), a security holder must not withdraw securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) during the period

(a) commencing at the time the offeror became obligated to take up securities under subsection 2.32.1(1), and

(b) ending at the time the offeror becomes obligated under either subsection 2.32.1(7) or (8) to take up securities not taken up by the offeror in reliance on subsection 2.32.1(6).

(b) in subsection (2) by replacing "The right of withdrawal under paragraph (1)(b) does not apply" with "Despite paragraph (1)(b), a security holder must not withdraw securities deposited",

(c) by adding the following paragraph after paragraph 2(a):

(a.1) in the case of a partial take-over bid, the securities were deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection 2.32.1(6) and the date of the notice of change or notice of variation is after the date that the offeror became obligated to take up securities under subsection 2.32.1(1), or,

(d) in paragraph (2)(b) by

(i) replacing "one or both of the following circumstances occur" with "any of the following apply",

(ii) replacing "a variation in the terms of the bid" with "there is a variation in the terms of a take-over bid or issuer bid" in subparagraphs (i) and (ii), and

(iii) adding the following subparagraph:

(iii) in the case of a take-over bid, there is a variation in the terms after the expiry of the initial deposit period consisting of either an increase in the consideration offered for the securities subject to the bid or an extension of the time for deposit to not later than 10 days from the date of the notice of variation.

15. Section 2.31 is replaced with the following:

2.31 If an offeror purchases securities under subsection 2.2(3), the purchased securities must not be counted in determining whether the minimum tender requirement in paragraph 2.29.1(c) is satisfied and the purchase does not reduce the number of securities the offeror is bound to take up under the take-over bid.

16. The Instrument is amended by adding the following sections:

Mandatory 10-day extension period – take-over bids

2.31.1 If, at the expiry of the initial deposit period, an offeror is obligated to take up securities deposited under a take-over bid pursuant to subsection 2.32.1(1), the offeror must

(a) extend the period during which securities may be deposited under the bid for a period of at least 10 days, and

(b) promptly issue and file a news release disclosing the following:

(i) that the minimum tender requirement specified in paragraph 2.29.1(c) has been satisfied,

(ii) the number of securities deposited and not withdrawn as at the expiry of the initial deposit period,

(iii) that the period during which securities may be deposited under the bid has been extended for the mandatory 10-day extension period, and

(iv) in the case of a take-over bid that

(A) is not a partial take-over bid, that the offeror will immediately take up the deposited securities and pay for securities taken up as soon as possible, and in any event not later than 3 business days after the securities are taken up, or

(B) is a partial take-over bid, that the offeror will take up and pay for the deposited securities proportionately in accordance with applicable securities legislation and in any event will take up the deposited securities not later than one business day after the expiry of the mandatory 10-day extension period and pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up.

Time limit on extension – partial take-over bids

2.31.2 In the case of a partial take-over bid,

(a) the mandatory 10-day extension period must not exceed 10 days, and

(b) the bid must not be extended after the expiry of the mandatory 10-day extension period.

17. Section 2.32 is amended

(a) in subsection (1) by deleting "a take-over bid or",

(b) in subsection (2) by

i. deleting "a take-over bid or", and

ii. deleting "the" before "securities deposited",

(c) in subsection (3) by

i. deleting "a take-over bid or", and

ii. deleting "the" after "the deposit of",

(d) in subsection (4) by replacing "An offeror may not extend its take-over bid or" with "An offeror must not extend its",

(e) in subsection (5) by

- i. deleting "a take-over bid or",*
- ii. deleting "only" before "required to take up", and*
- iii. adding "only" before "the maximum number of securities", and*

(f) in subsection (6) by deleting "a take-over bid or".

18. *The Instrument is amended by adding the following section:*

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

2.32.1(1) An offeror must immediately take up securities deposited under a take-over bid if, at the expiry of the initial deposit period, all of the following apply:

- (a) the deposit period referred to in section 2.28.1, section 2.28.2 or section 2.28.3, as applicable, has elapsed;
- (b) all the terms and conditions of the bid have been complied with or waived;
- (c) the requirement in paragraph 2.29.1(c) is satisfied.

2.32.1(2) An offeror must pay for any securities taken up under a take-over bid as soon as possible, and in any event not later than 3 business days after the securities deposited under the bid are taken up.

2.32.1(3) In the case of a take-over bid that is not a partial take-over bid, securities deposited under the bid during the mandatory 10-day extension period, or an extension period made after the mandatory 10-day extension period, must be taken up and paid for by the offeror not later than 10 days after the deposit of securities.

2.32.1(4) In the case of a take-over bid that is not a partial take-over bid, an offeror must not extend its bid beyond the expiry of the mandatory 10-day extension period unless the offeror first takes up all securities deposited under the bid and not withdrawn.

2.32.1(5) Despite subsection (4), if the offeror extends the bid in circumstances where the rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, the offeror must extend the bid without the offeror first taking up the securities which are subject to the rights of withdrawal.

2.32.1(6) Despite subsection (1), an offeror that has made a partial take-over bid is required to take up, by the time specified in that subsection, only the maximum number of securities that the offeror can take up without contravening section 2.23 or section 2.26.1 at the expiry of the bid.

2.32.1(7) In the case of a partial take-over bid, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the mandatory 10-day extension period.

2.32.1(8) Despite subsection (7), if at the expiry of the mandatory 10-day extension period rights of withdrawal conferred by paragraph 2.30(1)(b) are applicable, securities deposited before the expiry of the initial deposit period and not taken up by the offeror in reliance on subsection (6), and securities deposited during the mandatory 10-day extension period, must be taken up by the offeror, in the manner required under section 2.26.1, not later than one business day after the expiry of the withdrawal period conferred by paragraph 2.30(1)(b).

19. *Section 6.1 is replaced with the following:*

6.1(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

6.1(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

6.1(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 Definitions opposite the name of the local jurisdiction.

20. *Section 6.2 is amended by renumbering it as subsection 6.2(1) and by adding the following subsection:*

6.2(2) Despite subsection (1), in Ontario, only the regulator may make such a decision.

21. *Section 7.1 is replaced with the following:*

7.1 The take-over bid or issuer bid provisions in securities legislation that were in force immediately before May 9, 2016, continue to apply in respect of

(a) every take-over bid and issuer bid commenced before May 9, 2016,

(b) any take-over bid in respect of the securities of an offeree issuer subject to a take-over bid referred to in paragraph (a) commenced on or subsequent to May 9, 2016 and prior to the date of the expiry of a take-over bid referred to in paragraph (a), and

(c) any take-over bid in respect of the securities of an issuer that issued a news release before May 9, 2016 announcing that it intends to effect an alternative transaction, whether pursuant to an agreement or otherwise, commenced on or subsequent to May 9, 2016 and prior to the date of completion or abandonment of the alternative transaction.

22. *Section 7.2 is amended*

(a) *by renumbering it as subsection 7.2(1) and by replacing "This" with "Except in Ontario, this", and*

(b) *by adding the following subsection:*

7.2(2) In Ontario, this Instrument comes into force 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..

23. *Form 62-104F1 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.*

24. *Form 62-104F1 is amended by adding the following item:*

Item 9.1. Minimum Tender Requirement and Mandatory Extension Period

State the following in italics and boldface type at the top of the cover page of the take-over bid circular:

No securities tendered to this bid will be taken up until (a) more than 50% of the outstanding securities of the class sought (excluding those securities beneficially owned, or over which control or direction is exercised by the offeror or any person acting jointly or in concert with the offeror) have been tendered to the bid, (b) the minimum deposit period required under applicable securities laws has elapsed, and (c) any and all other conditions of the bid have been complied with or waived, as applicable. If these criteria are met, the offeror will take up securities deposited under the bid in accordance with applicable securities laws and extend its bid for an additional minimum period of 10 days to allow for further deposits of securities.

25. *Form 62-104F2 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.*

26. *Form 62-104F3 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.*

27. *Form 62-104F4 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.*

28. *Form 62-104F4 is amended by replacing "revise" with "revision" in item 14.*

29. *Form 62-104F5 is amended by replacing "Multilateral" with "National" in paragraph (a) of the General Provisions in Part 1.*

30. *Form 62-104F5 is amended by adding the following paragraph under subsection (2) of item 3:*

(a.1) *if one of the terms referred to in paragraph (a) is the mandatory 10-day extension period required pursuant to paragraph 2.31.1(a) of the Instrument, the number of securities deposited under the take-over bid and not withdrawn as at the date of the variation,*

31. *Except in Ontario, this Instrument comes into force on May 9, 2016. In Ontario, this Instrument comes into force 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.*

32. *This Instrument may be cited as MSC Rule 2016-1.*