

Annex B

Summary of Comments and CSA Responses

The following is a summary of comments and CSA responses in respect of the proposed amendments to MI 62-104, proposed changes to NP 62-203 and proposed consequential amendments (collectively, the “**Proposed Bid Amendments**”) published on March 31, 2015 in the 2015 Materials. Defined terms used herein have the same meaning as is ascribed to them in the notice to which this is appended.

PART I. GENERAL COMMENTS

ITEM	TOPIC AND SUBTOPIC	SUMMARIZED COMMENT	CSA RESPONSE
A.	COMMENTS ON KEY ELEMENTS OF THE PROPOSED BID AMENDMENTS		
1.	Whether the proposed Minimum Tender Requirement is appropriate	<p>The majority of commenters who commented on this aspect of the Proposed Bid Amendments are supportive of the Minimum Tender Requirement. Commenters generally agreed that the Minimum Tender Requirement, coupled with the 10 Day Extension Requirement, addresses the “pressure to tender” or coercion concerns raised by the CSA and contributes to the enhancement of the quality and integrity of the take-over bid regime.</p>	We acknowledge the comments of support for the Minimum Tender Requirement.
		<p>Three commenters suggested that there may be certain circumstances where the Minimum Tender Requirement should not apply.</p> <p>Two commenters raised the concern that there may be circumstances where the Minimum Tender Requirement would prevent a non-coercive bid from proceeding. For example, where a control block holder or other insiders do not</p>	<p>We acknowledge that enhanced leverage for blockholders is a likely consequence of the Bid Amendments; however, the CSA believe that such leverage is inherent to the new “majority tender” premise of the Bid Amendments.</p> <p>We did not make any changes to the</p>

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		<p>support a transaction because they have a stake in the outcome that is different from that of the minority security holders, it may not be practically possible for an offeror to achieve majority acceptance. Rather than excluding securities held in a control block or by insiders from being counted toward the Minimum Tender Requirement, the commenters recommend addressing this concern through exemptive relief from the Minimum Tender Requirement where the CSA determines it to be appropriate. The commenters suggest that the CSA should include guidelines in NP 62-203 outlining the circumstances in which the CSA would be likely to grant such exemptive relief.</p> <p>One commenter argued that the Minimum Tender Requirement should not apply where the offeror (whether alone or with joint actors) already exercises legal control over the offeree issuer.</p>	<p>Minimum Tender Requirement to accommodate the position that there may be specific circumstances where the Minimum Tender Requirement should not apply. We do not believe that there is a compelling basis for effectively creating two different minimum tender regimes depending on the control dynamic of the issuer.</p> <p>Since all considerations of exemptive relief are based on unique fact circumstances, we do not think that it is appropriate to provide guidance that attempts to predict or outline in advance the circumstances under which securities regulatory authorities would be likely to grant exemptive relief from the Minimum Tender Requirement.</p>
2.	Whether the proposed 10 Day Extension Requirement is appropriate	The majority of commenters who commented on this aspect of the Proposed Bid Amendments are supportive of the 10 Day Extension Requirement. Commenters generally agreed that the 10 Day Extension Requirement addresses the “pressure to tender” or coercion concerns raised by the CSA and contributes to the enhancement of the quality and integrity of the take-over bid regime.	We acknowledge the comments of support for the 10 Day Extension Requirement.
3.	Whether the proposed 120 Day Requirement is appropriate	Almost all commenters who commented on this aspect of the Proposed Bid Amendments are generally supportive of providing offeree boards with a longer, fixed period of time to	We acknowledge the comments in support of, and expressing concerns with, the proposed 120 Day Requirement. We

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		<p>consider and respond to a take-over bid. They agreed with the CSA's concern that under the current regime offeree boards do not have enough time to respond to unsolicited take-over bids with appropriate action, such as seeking value-maximizing alternatives or developing and articulating their views on the merits of the bid.</p> <p>Although a majority of commenters feel that a minimum of 120 days is an appropriate period of time, six commenters suggested that 120 days is too long, with most of these commenters indicating that 90 days would provide the benefits of more time without the disadvantages of an overly long bid period. These commenters noted in particular that:</p> <ul style="list-style-type: none"> • a 120 day bid period may deter potential offerors (for a number of reasons, including increased financing costs and the potential for increased competition associated with a longer bid period), resulting in a reduction of the level of hostile bid activity and missed opportunities for security holders; and • market data suggests that 90 days has historically been enough time to draw out competing bids and alternative transactions. <p>Only one commenter is not supportive of increasing the existing 35 day minimum deposit period.</p>	<p>have determined to adjust to the minimum deposit period to 105 days for the reasons described below.</p>
		<p>One commenter raised the concern that the 120 day minimum deposit period may result in compulsory acquisition provisions of certain Canadian corporate statutes (such as the</p>	<p>Upon further review of the Canadian corporate law compulsory acquisition provisions, we have determined to adjust</p>

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		<p><i>Canada Business Corporations Act</i>) not being available to offerors following a take-over bid. The right to acquire securities under statutory compulsory acquisition provisions is only available where, within 120 days of the date of a take-over bid, the bid is accepted by the holders of not less than 90% of the securities of the applicable class. The commenter argued that reducing the 120 day period by a modest amount – such as to 115 or 110 days – would likely not address the issue, noting that in practice it is typically not until an offeror has extended a bid on at least one occasion that the 90% threshold is met.</p>	<p>the minimum deposit period to 105 days. We believe that a minimum deposit period of 105 days will generally allow sufficient time for an offeror to conclude its bid and satisfy the subsequent 10 Day Extension Requirement before the 120th day from the date of its bid, while taking into account the potential impact that holidays in various Canadian jurisdictions may have on the offeror’s ability to receive acceptances. We believe that this minimum deposit period will meet the CSA’s policy objective of providing offeree issuer boards with a longer, fixed period of time to respond to a take-over bid while making it reasonably practicable for an offeror to avail itself of the compulsory acquisition provisions if its bid has been accepted by offeree security holders within 120 days from the date of its bid.</p>
B.	COMMENTS ON SPECIFIC ASPECTS OF THE PROPOSED BID AMENDMENTS		
1.	Issues related to the Minimum Tender Requirement in the context of partial take-over bids	Three commenters raised concerns over the application of the Minimum Tender Requirement in the context of partial take-over bids.	We did not make any changes to the Minimum Tender Requirement to accommodate the comments made in relation to partial take-over bids.

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		<p>One such commenter suggested that offerors should have the option of choosing between the Minimum Tender Requirement and a “minimum consent requirement” in the context of a partial take-over bid. This would alleviate the concern that the Minimum Tender Requirement, combined with the lack of withdrawal rights during the mandatory 10 day extension period, may reduce the likelihood of successful partial take-over bids and thus strongly discourage offerors from making partial take-over bids. Such minimum consent requirement would require that offeree security holders evidence their consent to a partial take-over bid pursuant to a written instrument and not have to tender their securities until the mandatory 10 day extension period.</p> <p>Similarly, another commenter argued that the Proposed Bid Amendments do not fully resolve the coercion and “pressure to tender” concerns for partial take-over bids because offeree security holders have different incentives to tender as compared to a take-over bid for all securities. The commenter proposed to address this issue by including a “form of acceptance” in the bid circular through which offeree security holders could separately vote for or against the partial bid rather than be obliged to support the bid by tendering to it.</p> <p>One commenter raised the concern that the Minimum Tender Requirement may preclude potentially desirable partial take-over bids such as, for example, “any and all” partial bids that accommodate a block trade at a greater than 15% premium to market price but which are also open to all other security holders.</p>	<p>The suggestions proposed by the commenters would require unduly complex changes to the Proposed Bid Amendments and result in a separate regime for partial take-over bids. We think those consequences would be undesirable and unnecessary, particularly given that partial take-over bids are rare. However, we will monitor the impact of the Bid Amendments on partial take-over bids.</p>

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2.	<p>Issues concerning proposals to allow a shortened minimum deposit period of not less than 35 days when an offeree board issues a deposit period news release announcing a shorter minimum bid period or where there is a specified alternative transaction</p>	<p>Eight commenters raised various concerns or suggestions in relation to the proposals for shortened deposit periods either initiated by an offeree board through the issuance of a deposit period news release or automatically in the case of a specified alternative transaction.</p> <p>Among the four commenters who raised concerns about an offeree board’s ability to reduce the minimum 120 day deposit period through the issuance of a deposit period news release:</p> <ul style="list-style-type: none"> • two commenters suggested that it creates uncertainty and/or confusion for security holders; • two commenters noted that it may reduce the probability of competing bids; and • two commenters recommended that the power to reduce the minimum deposit period to 35 days should be in the hands of offeree security holders, rather than the offeree board. <p>One commenter raised the issue that the offeree board’s ability to shorten the minimum deposit period could provide for potentially different outcomes for an unsupported offeror depending on whether a competing supported transaction is</p>	<p>We did not make any changes to the Proposed Bid Amendments to accommodate the concerns raised in respect of shortened minimum deposit periods for a bid.</p> <p>We believe that the framework for reducing a bid period under the Proposed Bid Amendments, including the requirements that the offeree board issue and file a news release and that the offeror send a notice of variation upon shortening its bid, is adequately clear.</p> <p>We believe that the offeree board’s ability to reduce the minimum deposit period would not, in and of itself, reduce the probability of competing bids.</p> <p>We believe that it would be impracticable for security holders to be responsible for deciding whether and when to reduce the minimum deposit period, and that security holder decision-making is appropriately captured by the Minimum Tender Requirement.</p> <p>We recognize that hostile offerors or offeree issuers may make tactical use of the timing required to complete different transaction structures under the Bid</p>

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		<p>structured as a take-over bid or as an alternative form of transaction. The commenter suggested three alternatives to the CSA’s proposal: (1) an automatic reduction to 35 days (or some other shorter default period) upon the announcement by an offeree issuer of a supported transaction, regardless of the structure adopted; (2) a minimum deposit period of 120 days regardless of the structure adopted; or (3) giving offeree issuers the ability to enforce equalization of timing beyond 120 days.</p> <p>One commenter raised concerns over the automatic reduction to 35 days in cases where an offeree issuer has agreed to enter into a plan of arrangement as a hostile offeror could gain an advantage by having its bid accepted before the plan is approved.</p> <p>Two commenters recommended that, to address the fact that alternative transactions usually take more than 35 days to be completed and a hostile offeror may benefit from a reduced minimum deposit period, in the case of an alternative transaction, offeree security holders should have the opportunity to consider both offers at the same time. Accordingly, these commenters suggested that the minimum deposit period for any then outstanding or subsequent take-over bids should be the expiry date of the alternative transaction, rather than 35 days from the date of the bid.</p>	<p>Amendments. However, the Bid Amendments are not premised on equalization of timing for all bids and alternative transactions, and are instead intended to preserve both offeree board discretion and “first mover advantage” on the part of an offeror, while avoiding an excessively complex regime.</p>
		<p>One commenter suggested that an offeree issuer should be able to shorten the minimum deposit period whether or not a take-over bid is on the horizon (e.g. by announcing that for the next two years the minimum deposit period for all formal</p>	<p>To ensure clarity as to the application of a shortened deposit period, we believe that it is preferable that the Bid Amendments permit offeree boards to adjust the timing</p>

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		take-over bids will be 40 days). This could have the effect of encouraging more take-over bids.	<p>of a deposit period only in the context of a specific take-over bid.</p> <p>This framework would not preclude an offeree board from announcing its willingness to reduce the minimum deposit period for any future take-over bid. However, such announcement will not in itself have the effect of reducing the deposit period for future-commenced bids.</p>
C.	OTHER COMMENTS		
1.	Role of security holder rights plans under the new regime, and defensive tactics more generally	<p>Nine commenters raised concerns over the current lack of specific guidance from the CSA on the use of security holders rights plans under the new regime. In particular, the commenters suggested that the CSA should provide more guidance on: (1) the treatment of rights plans as they relate to deposit periods; and (2) the use of rights plans as they relate to exempt take-over bids or “creeping bids”.</p> <p>One commenter suggested that the CSA could address the concerns raised by including a transition period to allow issuers to amend their rights plans to comply with the Proposed Bid Amendments, or include express language in the legislation that provisions in indentures, agreements or constating documents of issuers will not be binding on any person to the extent that such provisions are contrary to the Proposed Bid Amendments.</p>	We wish to remind participants in the capital markets of the applicability of NP 62-202, which means that securities regulatory authorities will be prepared to examine the actions of offeree boards in specific cases, and in light of the amended bid regime, to determine whether they are abusive of security holder rights.

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		Several commenters suggested that the CSA should undertake a broader review of NP 62-202 with two commenters noting the need for the CSA to look at voting pills in particular.	
2.	Technical drafting considerations with respect to the text of the Proposed Bid Amendments	A number of commenters raised technical drafting considerations with respect to the text of the Proposed Bid Amendments.	We thank the commenters for their input. In response to the comments received we have made certain discrete drafting changes to the Proposed Bid Amendments. We note that certain proposed drafting changes were beyond the scope of the Proposed Bid Amendments and, as a result, could not be fully considered by the CSA at this time.

PART II. COMMENTS ON SPECIFIC QUESTIONS

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1.	Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to a deposit period news release and the ability of an offeror to reduce the minimum deposit period for its bid as a result of the issuance of a deposit period news release?	One commenter suggested that an offeror should be allowed to account for the possibility of a reduced deposit period in its original bid documents. If the reduced period is activated, the offeror would be required to issue a news release only, rather than also having to prepare and mail a notice of variation.	We did not make any changes to the Proposed Bid Amendments to address the comment. Although allowing an offeror to rely solely on a news release would result in expediency for the offeror, we believe that it would come at the expense of the interests of security holders who should be assured of receiving a notice of variation in all circumstances where the

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			terms of a bid are varied.
2.	<p>The Proposed Bid Amendments include a definition of “alternative transaction” that is intended to encompass transactions generally involving the acquisition of an issuer or its business. Do you agree with the scope of the definition of “alternative transaction”? If not, please explain why you disagree with the scope and what changes to the definition you would propose.</p>	<p>Three commenters agreed with the scope of the definition.</p> <p>One commenter suggested that a broader definition of “alternative transaction” is appropriate and proposed that the definition import the concept of a transaction agreed to by the offeree issuer’s board that “affects materially” the control of the issuer. The commenter expressed concern that, absent this change, an offeree issuer board could undertake a transaction that materially alters control of the issuer without security holder approval (such as a private placement of voting securities) and without triggering the application of a shortened deposit period. Similarly, another commenter stated that it is unclear how the “alternative transaction” definition would apply to transactions that do not require security holder approval or how the definition distinguishes between a legitimate alternative transaction and a transaction that may be viewed as depriving offeree security holders of the ability to adequately respond to a take-over bid.</p> <p>One commenter proposed that clause (b) of the definition encompassing a transaction involving the acquisition of an issuer should be expanded to include the acquisition of the “business of the issuer”. Another commenter suggested that clause</p>	<p>We thank the commenters for their input.</p> <p>We have not revised the definition of “alternative transaction” to include transactions that “affect materially” the control of the issuer if they are not otherwise already captured within the definition. We note, however, that a transaction initiated by an offeree board in the context of a take-over bid may, regardless of whether or not it is an “alternative transaction”, still be subject to review under NP 62-202 depending on the circumstances.</p> <p>We agree with each of these comments and have made drafting changes to the definition of “alternative transaction” and related guidance in NP 62-203 in order to clarify the intended scope of the definition</p>

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		<p>(b) of the definition was duplicative and somewhat unclear given the existing scope of clause (a) and (c).</p> <p>One commenter noted that the purpose of the definition should cover all transactions that offeree security holders can effectively evaluate and compare the payment offered with the outstanding unsolicited bid.</p>	<p>and assist with the interpretation and application of the definition. In particular, we have removed clause (b) from the definition and have instead incorporated the substance of that former clause as guidance for the overall scope of the definition. Section 2.13 of NP 62-203 now states, in part, that the definition of “alternative transaction” 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.</p>
3.	<p>Do you anticipate any difficulties with the application of the Proposed Bid Amendments as they relate to alternative transactions? Does the proposed policy guidance in sections 2.13 and 2.14 of NP 62-203 assist with interpretation of the alternative transaction provisions?</p>	<p>One commenter noted that the proposed policy guidance gives additional clarity.</p> <p>One commenter raised the issue that an existing offeror may have difficulty making a prompt decision as to whether its then-outstanding offer can be varied to accelerate the expiry date based on a news release by the offeree issuer announcing an alternative transaction. The commenter questions whether such a news release should contain the same specificity as that contemplated by a “deposit period news release”. The commenter also suggested that consideration should be given as to whether an offeree issuer should be required to make a positive statement about the treatment of its announcement to avoid uncertainty in the market</p>	<p>We thank the commenters for their input.</p> <p>We believe that the proposed framework for “alternative transactions” strikes the most appropriate balance among offerors, offeree boards and offeree issuer security holders, while intending to be practical in application.</p> <p>We have, however, revised the guidance in NP 62-203 in light of comments. Since the “alternative transaction” provisions apply to the minimum deposit period for an offeror’s bid, we believe that it is for an offeror to assess whether or not an</p>

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		<p>and for then-outstanding offerors.</p> <p>Two commenters noted that an announced transaction is either an “alternative transaction” or it is not and therefore the proposed policy guidance concerning reasonable interpretation or issuer disclosure is actually unhelpful.</p>	<p>issuer has entered into an “alternative transaction”. As such, the guidance in section 2.14 of NP 62-203 now recommends that an offeror should reasonably determine whether an issuer’s announced transaction is an “alternative transaction” before either 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, as the case may be.</p>
4.	<p>Would policy guidance concerning the interpretation or application of the Proposed Bid Amendments as they relate to partial take-over bids be useful? If so, please explain.</p>	<p>All commenters who commented on this issue suggested that numerical examples would be helpful additions to the policy guidance.</p>	<p>We acknowledge these comments and have provided numerical examples in section 2.17 of NP 62-203.</p>
5.	<p>The Proposed Bid Amendments include revisions to the take up and payment and withdrawal right provisions in the take-over bid regime. Do you agree with these proposed changes or foresee any unintended consequences as a result of these changes? In particular, do you agree that there should not be withdrawal rights for securities deposited to a partial take-over bid prior to the expiry of the minimum</p>	<p>All commenters who responded to this question generally agreed with the revisions, particularly with respect to limiting withdrawal rights for securities deposited to a partial take-over bid.</p> <p>One commenter stated that it expects that the Proposed Bid Amendments may reduce the likelihood of successful partial take-over bids and thus discourage offerors from making partial take-over bids. Another commenter stated that partial take-over bids are likely to become even less common if the Proposed Bid Amendments are</p>	<p>We thank the commenters for their input.</p> <p>We did not make any changes to the Proposed Bid Amendments to address concerns regarding the possible inhibition of partial take-over bids, which we acknowledge will likely continue to be rare.</p>

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	<p>deposit period for so long as they are not taken up until the end of the mandatory 10 day extension period?</p>	<p>implemented.</p>	
6.	<p>Are the current time limits set out in subsections 2.17(1) and (3) sufficient to enable directors to properly evaluate an unsolicited take-over bid and formulate a meaningful recommendation to security holders with respect to such bid?</p>	<p>Three commenters noted that the current time limits set out in subsections 2.17(1) and (3) are reasonable.</p> <p>Two commenters noted that, while the time required for an offeree board to issue a directors' circular is not exactly the same as the corresponding deadline under U.S. law, its close proximity has proven convenient for inter-listed issuers and any consideration of a change should be mindful of cross-border coordination.</p> <p>Four commenters raised the concern that the 15 day period in subsection 2.17(1) may be too short, particularly given the 120 Day Requirement. Among these, one commenter suggested increasing the timeframe to 30 days, one commenter suggested increasing the timeframe to 28 days and one commenter suggested increasing the timeframe to the lesser of 30 days following the commencement of the bid, and 20 days prior to the end of the minimum deposit period.</p>	<p>We thank the commenters for their input.</p> <p>We did not make any changes to the current time limits set out in subsections 2.17(1) and (3). We believe that the current time limits will ensure that, regardless of the expiry date of any given bid, information relating to the offeree board's evaluation of the take-over bid will be provided in a timely manner to enable security holders to make fully informed decisions.</p>
7.	<p>Do you anticipate any changes to market activity or the trading of offeree issuer securities during a take-over bid as a result of the Proposed</p>	<p>Three commenters noted that they do not anticipate any significant changes to market activity or trading during a take-over bid as a result of the Proposed Bid Amendments. Among these, one</p>	<p>We thank the commenters for their input.</p>

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	<p>Bid Amendments? If so, please explain.</p>	<p>commenter noted that the extended timeframe to bid completion due to the 120 Day Requirement could result in a widening of the arbitrage discount on bids, particularly in situations where the market believes there is a relatively low probability of a competing bid.</p> <p>One commenter noted that if market participants wish to try to profit from price discrepancies or otherwise, they will likely continue to do so within the regulatory framework regardless of the final form of the Proposed Bid Amendments.</p> <p>One commenter remarked that it generally agrees with the expected impacts described in the 2015 Materials.</p>	