

Legal update

Important amendments to Canadian take-over bid regime

February 2016

Corporate finance and securities

The Canadian Securities Administrators (CSA) have published significant amendments to the Canadian take-over bid regime (the Amendments). The Amendments are an initiative of all CSA members and are intended to strike a fair balance between the interests of bidders, target boards of directors and security holders of target companies. The Amendments will come into force on May 9, 2016; however, legislative amendments in Ontario are necessary.

While the Amendments do not recognize a target board's right to "just say no" to and block a hostile bid, they will provide boards of directors of target companies with additional time to respond to such bids and shareholders with the ability to make "voluntary, informed and coordinated" decisions as to whether to tender their securities to the bid.

The key provisions of the Amendments to the Canadian take-over bid regime will, upon coming into effect, require that:

- "non-exempt bids" remain open for at least 105 days (down from the original proposal of 120 days), subject to certain exceptions;
- all non-exempt bids contain a 50%+1 minimum tender condition, which cannot be lowered or waived;
- all non-exempt bids be extended for a minimum 10-day period once the minimum tender condition has been satisfied and all other conditions have been satisfied or waived, and
- partial bids also be subject to the 50%+1 mandatory minimum tender condition and that tendered shares be taken up *pro rata*.

We are preparing a more detailed analysis of these amendments – another update will follow.

For further information, please contact one of the following lawyers:

> Walied Soliman	Toronto	+1 416.216.4820	walied.soliman@nortonrosefulbright.com
> Solomon Sananes	Montréal	+1 514.847.4411	solomon.sananes@nortonrosefulbright.com
> Geoffrey G. Gilbert	Ottawa	+1 613.780.3764	geoffrey.gilbert@nortonrosefulbright.com
> Pierre Déry	Québec	+1 418.640.5009	pierre.dery@nortonrosefulbright.com
> Paul Fitzgerald	Toronto	+1 416.216.3941	paul.fitzgerald@nortonrosefulbright.com
> Marcus W. Archer	Calgary	+1 403.267.9547	marcus.archer@nortonrosefulbright.com

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.