

**Local Notice and Request for Comment:**  
**Proposed Multilateral Instrument 61-101**  
*Protection of Minority Security Holders in Special Transactions;*  
**Proposed Companion Policy to MI 61-101; and**  
**Proposed Consequential Amendments to Multilateral Instrument 11-102 *Passport System* and National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)***

**FEBRUARY 28, 2019**

**Introduction**

The Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) is publishing for a 60-day comment period proposed Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**); proposed Companion Policy to MI 61-101 (**61-101CP**); and proposed consequential amendments to Multilateral Instrument 11-102 *Passport System* and National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

MI 61-101 is currently a rule or regulation in each of Ontario, Québec, Alberta, Manitoba, and New Brunswick. Even though MI 61-101 is not a rule in Saskatchewan, all reporting issuers listed on the Toronto Stock Exchange, TSX Venture Exchange (**TSX-V**), Aequitas NEO Exchange, and Canadian Securities Exchange already have to comply with MI 61-101 as a requirement of being listed on those exchanges or because of reporting status in Ontario and Québec.

The British Columbia Securities Commission is also considering publishing MI 61-101 for comment in the near future.

MI 61-101 addresses issues with respect to conflicts of interest. It contains requirements for enhanced disclosure, independent valuations, and majority of minority security holder approvals for certain transactions including insider bids, issuer bids, certain business combinations, and related party transactions. The proposed text of MI 61-101 is contained in Annex A to this Notice, and will also be available on the website of the FCAA at [www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca).

This Notice summarizes the key terms of MI 61-101 and includes a request for comment.

We have not proposed any variations from the version of MI 61-101 that applies in Ontario, Québec, Alberta, Manitoba, or New Brunswick other than as necessary to include Saskatchewan as a participating jurisdiction.

### **Substance and Purpose**

MI 61-101 is designed to help provide fair treatment to all security holders, which is a key aspect of maintaining a fair and efficient capital market and protecting the public interest. MI 61-101 regulates business combinations and take-over bids involving certain insiders or related parties. For example, it regulates transactions that may potentially raise concerns for minority security-holders such as proposed merger and acquisition transactions in which a significant security-holder could have an advantage by virtue of voting power, board representation, or preferential access to information. In addition, MI 61-101 regulates various other transactions involving a related party such as share or asset acquisitions, loans and forgiveness of loans, guarantees and service agreements.

In an effort to ensure equal treatment for all security holders, MI 61-101 regulates the following types of transactions:

- a. Insider bids: a take-over bid by an issuer insider;
- b. Issuer bids: an acquisition by the issuer of its own securities;
- c. Business combinations: certain transactions, such as an amalgamation or plan of arrangement, where a security-holder is required to sell or exchange its securities without its consent; and
- d. Related party transactions: a specified type of transaction between the issuer and a related party of the issuer such as a director, senior officer or significant security holder.

Although these transactions may be beneficial and are not inherently unfair, they involve conflicts of interest that are capable of being abusive or unfair to minority security-holders. MI 61-101 is designed to address the risks associated with these potential conflicts of interest through certain procedural mechanisms:

- a. Enhanced disclosure, including disclosure of prior valuations or prior offers for the target;
- b. Independent valuations;
- c. Minority security holder approval; and
- d. Independent committee review, which is recommended for all transactions regulated by MI 61-101, and required for insider bids.

## **Background**

MI 61-101 has been in effect in Ontario and Québec since February 1, 2008 and was preceded by substantively similar local instruments and policies in each of those jurisdictions. MI 61-101 applies to all reporting issuers in Ontario and Québec. MI 61-101 became effective in Alberta, Manitoba, and New Brunswick on July 31, 2017. Further, MI 61-101 has been incorporated as a policy of the TSX-V by virtue of TSX-V Policy 5.9 *Protection of Minority Security Holders in Special Transactions* and as such applies to issuers listed on the TSX-V.

Adopting MI 61-101 will provide added investor protection in Saskatchewan's capital markets and may reduce regulatory burden for issuers by:

- a. Providing additional investor protection for minority security-holders of all reporting issuers in Saskatchewan and certain large private issuers undertaking issuer bids or which are subject to a take-over bid by an insider;
- b. Increasing the efficiency of local compliance and enforcement mechanisms where a take-over bid, issuer bid, or business transaction raises concerns related to minority security-holder protections and compliance with MI 61-101;
- c. Providing clarity for reporting issuers in Saskatchewan that currently must apply to the Ontario Securities Commission or Autorité des marchés financiers for exemptions from, or to address breaches of, MI 61-101 because it is not in force in Saskatchewan; and
- d. Fostering further harmonization of the Canadian take-over bid and issuer bid regimes.

## **Consequential Amendments**

Multilateral Instrument 11-102 *Passport System* contains references to MI 61-101 as applying only in Ontario and Québec. Consequential amendments are being proposed to MI 11-102 to include Alberta, Saskatchewan, Manitoba, and New Brunswick such that the passport system will apply to exemptive relief applications in respect of MI 61-101. Amendments are also being proposed to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* to reflect that filings under MI 61-101 in Alberta, Saskatchewan, Manitoba, and New Brunswick must be made through the System for Electronic Document Analysis and Retrieval.

## **Request for Comments**

We welcome your comments on MI 61-101, its companion policy, and the consequential amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. MI 61-101 would apply to all reporting issuers in Saskatchewan, including those that are not listed on a Canadian exchange or reporting in Ontario and Québec, unless an exemption is available. It would also apply to take-over bids by issuer insiders and issuer

bids by non-reporting issuers that are subject to Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*. Do you have any concerns with the application of MI 61-101 to these types of issuers?

2. MI 61-101 may require non-reporting issuers to comply with the requirement to obtain a formal valuation. Do you have any concerns regarding compliance with this requirement?
3. Do you have any general concerns with the FCAA's proposed adoption of MI 61-101?
4. If MI 61-101 is adopted in Saskatchewan, are there any changes to it that you would recommend? Please provide reasons.

## **Annexes**

The following annexes are attached to this Notice:

Annex A Proposed MI 61-101;

Annex B Proposed 61-101CP;

Annex C Proposed Amendments to Multilateral Instrument 11-102 *Passport System*;

Annex D Proposed Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*; and

Annex E Local Matters.

Please submit your comments in writing on or before April 29, 2019. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to the Financial and Consumer Affairs Authority of Saskatchewan.  
Deliver your comments only to the address below:

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We cannot keep submissions confidential because securities legislation in Saskatchewan requires us to share a summary of the comments with other officials in Government. In some cases, we may be required to provide the full comments as opposed to a summary. Please do not include any personal information directly in the comments submitted to the FCAA. However, it is important that you state on whose behalf you are making the submission.