



# 2009 CHANGES TO THE ACQUISITION FRAMEWORK IN CANADA

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**OSLER**

## »» Effect of the Financial Crisis

»» Overall small impact on legal context for Canadian acquisitions

»» Contrast with American judicial consideration of crisis M&A

»» Some impact seen in role of private placements

»» Catalyst to accelerated change in TSX rule

## » Shareholder Primacy as Driver of M&A Attitudes

### SHAREHOLDER VOTES

- ▶ Shareholder franchise and current votes highly influential with securities regulators

### TSX APPROVAL THRESHOLDS FOR STOCK TRANSACTIONS

- ▶ Previous ability to issue 100%
- ▶ Proposed 50% threshold
- ▶ Final 25% rule consistent with US practice

### CONTRASTING OSC AND ASC DECISIONS

- ▶ OSC favours immediate shareholder primacy in HudBay-Lundin
- ▶ Contrast ASC and OSC approach in Profound Energy and Neo, but specific facts limit application

## » Deal Protection

Significance of  
conflicts in  
judicial and  
regulatory review

Standstill  
agreements and  
sale framework  
post Ventas

Fiduciary outs  
post BCE

Competition Act  
and Investment  
Canada Act

## » Summary

Financial crisis further  
strengthens shareholder primacy

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Largest change in Canadian acquisition  
context is the new TSX share issuances rule

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Acquirors need to appeal to  
shareholders of both sides of the deal

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