August 12, 2026

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission of New Brunswick
Manitoba Securities Commission
Northwest Territories Office of the Superintendent of Securities
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Service NL (Newfoundland and Labrador)
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Via email: https://www.securities-administrators.ca/consultations/

Re: CSA Notice and Request for Comment – *Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes*

We are writing in response to the CSA Notice and Request for Comment – *Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes* (the "**Proposed Amendments**"). Capitalized terms used in this letter that are not otherwise defined herein have the meanings given to them in the Proposed Amendments.

Thank you for the opportunity to comment on the Proposed Amendments. Below are our comments on the questions posed in the Notice and Request for Comment.

Selective Repurchase Exemption

1. 5% Annual Limit

One of the conditions of the Selective Repurchase Exemption is that the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the Selective Repurchase Exemption does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period. Please comment on the appropriateness of this condition. If you are of the view that a different threshold would be more appropriate, please explain why.

BD&P's Response: We agree that a 5% limit is an appropriate threshold. It strikes a reasonable balance between providing issuers with flexibility to repurchase securities from specific securityholders where commercially desirable while maintaining the principle that selective repurchases should remain limited in scope. The proposed threshold appears sufficient to facilitate legitimate transactions without undermining the broader issuer bid regime.

2. Maximum of Five Persons / Five Transactions

> *One of the conditions of the Selective Repurchase Exemption is that securities must be acquired from not more than 5 persons in the aggregate and in not more than 5 transactions in the aggregate, within any period of 12 months. Please comment on the appropriateness of this condition. If you are of the view that a different threshold would be more appropriate, please explain why.*

BD&P's Response: We generally agree with this condition, as it helps ensure that the exemption remains targeted and is not used as a substitute for broader issuer bid mechanisms. That said, if the aggregate 5% annual limit is retained, we question whether a strict cap on the number of sellers or transactions is necessary. Consideration could be given to providing greater flexibility in this regard while continuing to rely on the aggregate repurchase limit as the principal safeguard.

3. Liquid Market Requirement

> *One of the conditions of the Selective Repurchase Exemption is that a liquid market in the class of securities that is the subject of the bid exists at the date of the bid, determined in accordance with proposed section 1.12 of NI 62-104, which is derived from section 1.2 of MI 61-101. Section 1.12 includes, among other things, a requirement that the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000 and that the market value of the class of securities on the published market on which the class was principally traded was at least $75,000,000. Based on available data, approximately 75% of issuers listed on the Toronto Stock Exchange and less than 10% of issuers listed on the TSX Venture Exchange would satisfy the liquid market criteria. Does proposed section 1.12 of NI 62-104 strike an appropriate balance between ensuring that there is sufficient liquidity to enable securityholders who do not participate in the bid to dispose of their securities in the market without unduly limiting the availability of the Selective Repurchase Exemption? If not, what criteria and/or thresholds would be more appropriate?*

BD&P's Response: We question whether the proposed liquid market requirement is necessary. The relatively low repurchase limit and other conditions of the exemption already constrain its potential market impact. In our view, acquisitions conducted within the proposed 5% threshold are unlikely to materially affect overall market liquidity. The proposed requirement may unnecessarily limit the availability of the exemption, particularly for smaller issuers, without providing a commensurate investor protection benefit.

4. News Release Disclosure

> *Should the news release that the issuer is required to issue and file following the making of the bid include any additional information, and if so, what?*

BD&P's Response: We believe the proposed disclosure requirements are generally appropriate and appear sufficient to provide transparency regarding the use of the exemption. We do not currently see a need for significant additional disclosure requirements.

5. Determination of Consideration

> *Is it appropriate for the value of the consideration paid by the issuer for any securities repurchased to be determined with reference to an unaffected closing price, or should the consideration be determined on the basis of the closing price of the class of subject securities following an announcement of the bid?*

BD&P's Response: We agree that using an unaffected closing price as the reference point is the more appropriate approach. Determining consideration by reference to a post-announcement trading price could permit the transaction itself to influence the benchmark price and may introduce unnecessary uncertainty into the pricing process.

6. Interaction with NCIB Exemption

Do you agree that purchases made in reliance on the Selective Repurchase Exemption should not reduce the maximum number of securities that an issuer may acquire in reliance on the NCIB Exemption?

BD&P's Response: We agree that purchases made in reliance on the Selective Repurchase Exemption should not reduce the number of securities that may be acquired under the NCIB Exemption. If such purchases were required to count against an issuer's NCIB capacity, the practical utility of the proposed exemption would be significantly diminished.

7. Impact on NCIBs and Liquidity

Do you expect that the Selective Repurchase Exemption will: (a) curtail repurchases by issuers pursuant to formal issuer bids or NCIBs; or (b) have any negative impact on liquidity in the relevant class of securities?

BD&P's Response: The exemption may result in some issuers choosing to undertake selective repurchases in circumstances where they might otherwise have relied on an NCIB. However, we do not view this as problematic. Assuming the proposed limits are retained, we do not anticipate any material adverse impact on market liquidity.

8. Limiting Exemption to Issuers with Operative NCIBs

Should the availability of the Selective Repurchase Exemption be limited to issuers with operative NCIBs? If so, should such issuers have repurchased a minimum number of securities under such NCIBs as at the date of the bid? If so, what minimum amount of repurchases would be appropriate and why?

BD&P's Response: No. Requiring an issuer to have an operative NCIB as a condition to relying on the exemption would unnecessarily restrict its availability and reduce its utility. The proposed exemption should be capable of standing on its own, subject to the specific conditions and limitations applicable to it.

9. Practical Challenges

Are there foreseeable challenges, practical or otherwise, for issuers who may wish to rely on the Selective Repurchase Exemption? If so, please also explain whether and how they may be addressed or mitigated.

BD&P's Response: We do not anticipate significant practical challenges with use of the exemption. However, issuers may require guidance regarding the application of certain technical conditions and the interaction of the exemption with existing issuer bid and stock exchange requirements. Additional CSA guidance may be helpful in promoting consistent application.

10. Unintended Consequences or Misuse

> *Are there foreseeable unintended consequences of the Selective Repurchase Exemption or ways in which the Selective Repurchase Exemption could be misused?*

BD&P's Response: As with any exemption, there is a possibility that market participants may attempt to structure transactions in a manner that is inconsistent with the policy objectives underlying the exemption. However, the proposed limits, disclosure requirements and other conditions appear to provide meaningful safeguards against misuse. We do not currently foresee significant unintended consequences.

11. Greenmail Concerns

> *Do you think that the Selective Repurchase Exemption may give rise to concerns related to "greenmail"? If so, do you think that the 5% repurchase limit helps to mitigate such concerns?*

BD&P's Response: The exemption could give rise to concerns regarding selective repurchases from significant securityholders in certain circumstances. However, we believe the proposed 5% limit, together with the other conditions of the exemption and applicable disclosure requirements, substantially mitigates the risk that the exemption could be used to facilitate greenmail-type transactions.

Equity Equivalent Derivatives

12. Equity Equivalent Derivatives

> *Do you agree with the proposed "equity equivalent derivative" concept, as set out in the definition and its associated guidance? If not, what changes would you suggest?*

BD&P's Response: We support the proposed definition of "equity equivalent derivative" and have no specific drafting changes to suggest at this time.

As a more general comment, however, we believe that it would be helpful to provide additional guidance in proposed revised Item 3.1 of NP 62-203 and proposed new Item 9.4 of 51-102CP with respect to the circumstances in which the use of equity equivalent derivatives may give rise to public interest concerns under the proposed framework. In particular, we would welcome further clarification of the statement that concerns may arise where a holder accumulates a substantial economic position through equity equivalent derivatives and seeks to influence the outcome of a potential take-over bid or a matter subject to securityholder approval by exerting pressure on, or communicating expectations regarding commercial incentives or disincentives to, a counterparty or its affiliates in connection with the acquisition, disposition, or voting of securities of the offeree issuer or issuer.

For example, it would be helpful if the guidance clarified that the accumulation of a substantial economic position through equity equivalent derivatives and seeking to influence the outcome of a potential take-over bid or a matter subject to securityholder approval will not give rise to public interest concerns absent the exertion of pressure on, or communication of expectations regarding commercial incentives or disincentives to, a counterparty or its affiliates in connection with the acquisition, disposition, or voting of securities of the offeree issuer or issuer. In our view, additional guidance or examples regarding the indicia of conduct that would constitute the exertion of pressure or communication of incentives and give rise to public interest concerns, or conversely, and perhaps preferably, guidance as to the use of equity equivalent derivatives in this context that would not give rise to public interest concerns would help market participants and their advisors distinguish between legitimate uses of equity equivalent derivatives and those that will give rise to public interest concern.

We further note that the terms "exerting pressure," "communicating expectations," and "commercial incentives or disincentives" in the guidance, are subjective in nature, and could create uncertainty for market participants and could potentially have a chilling effect on legitimate market activity, reduce the use of otherwise efficient risk management and investment tools, and make it more difficult for market participants to assess when regulatory concerns may arise.

13. Disclosure During Take-Over Bids and Proxy Solicitations

Do you agree with the proposal to require disclosure of equity equivalent derivatives during a take-over bid and proxy solicitation for which an information circular is required? Why or why not?

BD&P's Response: Yes, for the reasons set out in the Proposed Amendments. We also note that Item 3 of Form 62-103F1, Required Disclosure Under the Early Warning Requirements, requires disclosure of "securities lending arrangements" and "related financial instruments". Equity equivalent derivatives would appear to fall within, or at least be closely analogous to, the types of arrangements contemplated by that disclosure requirement. As a result, the proposed disclosure requirements for take-over bid and proxy circulars are conceptually consistent with information that is already required, and presumably considered relevant and material, under the early warning reporting regime.

The CSA may also wish to consider whether Form 62-103F1 should be modified to further align the early warning disclosure requirements with the proposed disclosure requirements for take-over bid and proxy circulars. For example, Form 62-103F1 permits a filer to withhold disclosure of "the identity of the counterparty or proprietary or commercially sensitive information". It may be that the CSA's view is that requiring such disclosure before a party has initiated a take-over bid or proxy solicitation is unnecessary and could have a chilling effect. However, the CSA may wish to consider clarifying that "related financial instruments" includes equity equivalent derivatives, consistent with the approach reflected in the Proposed Amendments.

14. Potential Unintended Consequences

Would the proposed new disclosure requirements referenced in question 13 have unintended consequences, such as impacting the number or quality of take-over bids or proxy solicitation campaigns?

BD&P's Response: We do not anticipate that the proposed disclosure requirements will materially affect the number or quality of take-over bids or proxy solicitation campaigns. That said, counterparties may be uncomfortable with being named and having detailed terms of their arrangements publicly disclosed. For example, in *Re Bison Acquisition Corp*,[1] the financial institution counterparty to the total return swaps at issue, was indirectly drawn into the proceedings relating to the bid. We are not in a position to assess how significant this concern may be for financial institutions or how they may manage it in practice, but we do not view it as a reason to oppose the proposed disclosure requirements.

[1] *Re Bison Acquisition Corp*, 2021 ABASC 188.

15. Public Broadcast, Speech and Publication Exemption

> *While the proposed new disclosure requirements referenced in question 13 would not be triggered until a person or company is required to prepare and send a take-over bid or information circular, prospective bidders or activists may enter into equity equivalent derivative transactions prior to that time. Should a person or company soliciting proxies in reliance on the public broadcast, speech, or publication exemption in subsection 9.2(4) of NI 51-102 be required to provide the disclosure contemplated by proposed new Items 6.7 and 6.8 of Form 51-102F5?*

BD&P's Response: Yes. We believe that a person or company soliciting proxies in reliance on the public broadcast, speech or publication exemption should be required to provide disclosure regarding equity equivalent derivatives. A person relying on that exemption is still making a public solicitation, and its economic interest in the issuer is just as relevant as it would be in the formal solicitation context. In addition, a person relying on the exemption is already required to make available certain information required by the information circular form. Requiring disclosure regarding equity equivalent derivatives would therefore be conceptually consistent with the existing structure of the exemption and would promote consistency and transparency.

As a technical matter, if the proposed disclosure requirements are extended to persons relying on the public broadcast, speech or publication exemption, the CSA may wish to also require the disclosure contemplated by proposed Item 6.6 of Form 51-102F5 regarding beneficial ownership. In our view, it would not make sense to require disclosure regarding equity equivalent derivatives without also requiring disclosure of the person's direct beneficial ownership position in the issuer.

16. Six-Month Historical Disclosure

> *Given that Item 7 of Form 62-104F1 requires that a take-over bid circular include disclosure about any securities of the offeree issuer purchased or sold by certain persons during the 6-month period preceding the date of the take-over bid, do you agree with the proposed requirement in Item 8.1 of Form 62-104F1 that a take-over bid circular include disclosure about related financial instruments and other agreements, arrangements or understandings that have or had the effect of altering economic exposure to the offeree issuer during the 6 month period preceding the date of the bid? Why or why not?*

BD&P's Response: Yes. We agree with the proposed requirement for the reasons set out in the Proposed Amendments.

<u>Early Warning Reporting Triggers</u>

17. New Reporting Issuer Trigger

> *Subsection 5.1(3) of NI 62-104 would deem securities beneficially owned, or over which control or direction is exercised, by a person at the time that an issuer becomes a reporting issuer to have been acquired by the person at that time for the purposes of Part 5 of NI 62-104. Please comment on the appropriateness and potential impact of this proposed provision.*

BD&P's Response: We support the proposed provision, as it provides a clear triggering event for early warning reporting when an issuer becomes a reporting issuer. However, we note that because the obligation arises as a consequence of the issuer's change in status rather than any affirmative acquisition by a securityholder, there is a risk that some holders may be unaware of the reporting requirement and inadvertently fall out of compliance. Additional guidance or educational measures may assist in reducing that risk.

18. Joint Actor Deemed Acquisition/Disposition Rules

Subsection 5.1(4) of NI 62-104 would deem each person acting jointly or in concert with other persons in respect of an issuer to have acquired the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by such other persons when they began acting jointly or in concert with each other. Relatedly, subsection 5.1(5) would deem each person that ceases acting jointly or in concert with other persons in respect of an issuer to have disposed of the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by such other persons when they ceased acting jointly or in concert with each other. Please comment on the appropriateness of these proposed provisions and any foreseeable concerns with its interpretation and/or enforceability.

BD&P's Response: We generally support these provisions. The proposals appear consistent with the policy objective of ensuring that early warning reporting reflects the collective ownership position of persons acting jointly or in concert. To the extent possible, additional guidance regarding when persons are considered to begin or cease acting jointly or in concert would help improve certainty and promote consistent application of the regime.

Non-Reporting Issuer Exemptions from the Take-Over Bid and Issuer Bid Requirements

19. Additional Excluded Categories

Are there any other categories of persons that should be excluded for the purposes of calculating the Maximum Securityholder Condition?

BD&P's Response: We support the proposed expansion of the categories of persons that are excluded when calculating the Maximum Securityholder Condition. The proposal should make the exemption available in a broader range of circumstances that do not raise the policy concerns underlying the take-over bid and issuer bid requirements.

20. Increase Beyond 50 Securityholders

After the inclusion of the additional categories proposed, should the Maximum Securityholder Condition be further increased beyond 50? If so, what should it be increased to and why?

BD&P's Response: Yes. We would support increasing the Maximum Securityholder Condition to 100 securityholders. In our view, the existing threshold may be unnecessarily restrictive, particularly given the significant time and expense associated with complying with the formal take-over bid regime. A threshold of 100 would continue to capture issuers with a relatively limited shareholder base while providing greater flexibility for legitimate private market transactions.

Settlement Period

We do not have any specific comments on these proposals and defer to other market participants and service providers directly involved in the settlement process regarding any operational considerations associated with the proposed changes.

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We appreciate the opportunity to comment on the Proposed Amendments. If you have any questions on our comments or if we can clarify or expand on any of them, please feel free to contact Bill Maslechko [redacted], James Kidd [redacted], Ted Brown [redacted] or Mardi McNaughton [redacted].

Yours very truly,

BURNET, DUCKWORTH & PALMER LLP

"Burnet, Duckworth & Palmer LLP"