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Via E-mail

August 24, 2026

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

Ontario Securities Commission
20 Queen Street West
P.O. Box 55, Suite 1903
Toronto, Ontario M5H 3S8

Attention: Adeline Lee
Senior Legal Counsel, Corporate Finance
[redacted]

Dear Sirs and Mesdames:

RE: Request for Comments: Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes

We write to you 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 "**Notice and Request**") and to submit our comments for further consideration by the Canadian Securities Administrators (the "**CSA**"). Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Notice and Request. For convenience of reference, the CSA's specific questions are set out in *italics* below, followed by our responses.

These comments are those of the writers noted below and do not necessarily reflect the views of clients or of others in our firm.

As such, please find below a summary of our comments:

Selective Repurchase Exemption

1. 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.

Given the stated intention that securities purchased under other exemptions set forth in Division 2 of Part 4 of NI 62-104 would not reduce the aggregate number of securities that could be acquired pursuant to the proposed Selective Repurchase Exemption, we consider the proposed 5% repurchase limit appropriate. The CSA may want to consider including a statement clarifying the intended interaction among various issuer bid exemptions in the instrument or the companion policy (to clarify, for example, that an issuer may rely on the Selective Repurchase Exemption to acquire additional securities (up to the 5% limit) from a person that is also an executive officer or director of the issuer if the issuer had already relied on exemption in Section 4.7 of NI 62-104 to purchase 5% of such person's securities during the relevant 12-month period).

2. 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.

As noted in our response to Question 4 below, we consider these restrictions appropriate, including to mitigate use of the exemption by a potential "greenmailer". The CSA may want to consider clarifying, in the instrument or the companion policy, instances where aggregation of purchases would be appropriate. For example, in the case of investment fund structures whereby investment decisions on behalf of one or more fund entities holding issuer's securities are made by the same manager or the fund entities are otherwise controlled by the same manager or entity.

3. 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?

No comment.

4. 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?

The proposed rules would require that the news release include the identity of the seller. We believe that this is important information and would help to mitigate against the use of the exemption in "greenmail" situations.

We also note that the proposed rules include an aggregation rule to restrict bundling of shares for purposes of fitting within the limits on the number of selling securityholders (similar to the aggregation rules applicable to the private agreement exemption to the take-over bid rules in Section 4.2 of NI 62-104). These restrictions would also serve to mitigate use of the exemption by a potential "greenmailer". We question whether there are other requirements that should be considered such that the exemption does not encourage the use of the exemption by shareholders seeking to apply pressure to boards to repurchase shares selectively. For example, consideration should be given to whether required public disclosure should include the details of any securities transactions engaged in by the selling securityholder in the prior six months (similar to the requirements of Item 7 of Form 62-104F1). Requiring that prior securities trading activity be disclosed could also assist a board of directors in assessing what impact the transaction might have on the market for the issuer's securities as is proposed to be required in section 4.6.1(1)(f) of NI 62-104 as set out in section 15 of Annex A of the Notice and Request.

5. 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?

The definition of a "liquid market" sets a fairly low bar for eligibility for the Selective Repurchase Exemption: for example, the requirement of at least 1,000 trades during the prior 12 months would include issuers that have an average of four trades per trading day. For many issuers that meet the requirement for a liquid market but have very infrequent trading, closing prices can be highly volatile. This could result in repurchases being made at premiums to volume-weighted trading prices based on an up-tick to the closing price based on a small value transaction. Accordingly, consideration should be given to whether the consideration payable limit under the Selective Repurchase Exemption should be set with reference to "market price" of the subject securities on the date of the bid, similar to issuer bid exemptions set forth in Sections 4.7 and 4.8 of NI 62-104 and the private agreement take-over bid exemption in Section 4.2 of NI 62-104. Given the 5% limit on repurchases under the Selective Repurchase Exemption, we do not consider it necessary to use post-announcement closing or market price to set the consideration threshold.

6. 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?

Given the proposed repurchase limit and purchaser and transaction limits for the Selective Repurchase Exemption, we expect that most issuers will use this exemption for purposes separate and distinct from the NCIB programs. As such, we agree that the purchases made in reliance on the Selective Repurchase Exemption should not reduce the number of securities that may be repurchased under the NCIB Exemption.

7. 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?

Given the proposed repurchase limit and purchaser and transaction limits for the Selective Repurchase Exemption, we do not expect either of these consequences as a result of adoption of this exemption.

8. 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?

We do not believe any of the limitations described are necessary for the reasons set out in our responses above.

9. 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.

We are of the view that the requirement in paragraph (f) in Section 4.6.1(1) of NI 62-104 in Annex A for the board to make determinations regarding the effect of the bid on market liquidity and market price or value of securities may result in an issuers' directors having to seek opinions from financial advisors to support such determinations (similar to the practice that has developed with respect to issuer bids). This would increase the time and costs associated with issuers relying on this exemption. We are of the view that the requirement for a liquid market to exist at the date of the bid (under proposed paragraph (c) in Section 4.6.1(1) of NI 62-104 in Annex A), combined with the proposed repurchase limit and purchaser/transaction limits, is sufficient to address any concerns with liquidity and market impact of any repurchases made under the Selective Repurchase Exemption. Furthermore, corporate statutes in most if not all Canadian jurisdictions require approval of a corporation's board of directors to effect any repurchases of equity securities.

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

Nothing to note in addition to the concerns set out in our responses above and below.

11. 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?

Although a number of elements of the proposed Selective Repurchase Exemption will mitigate the extent to which it could be used for greenmail, nevertheless, the creation of the exemption would create more opportunity than exists currently. A number of the proposed requirements (such as the limits on number of purchases and requirement for a discount to the closing price, the requirement to identify the seller, and the requirement for the issuer's board to determine that the transaction will not have a significant negative effect on the market price or value of its securities) are helpful but would not preclude the potential for greenmail.

Equity Equivalent Derivatives

12. 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?

No comment.

13. 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?

Given the existing requirement for reporting insiders to report "related financial instruments" on SEDI pursuant to National Instrument 55-104 – *Insider Reporting Requirements and Exemptions*, it does not strike us as onerous that a party making a formal take-over bid or issuing an information circular in a proxy solicitation make similar disclosure.

14. 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?

No comment.

15. 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?

The policy rationale for requiring disclosure of equity equivalent derivatives would be the same for solicitations made pursuant to subsection 9.2(4) of NI 51-102. Given that this exemption already requires in section 9.2(4)(c) of NI 51-102 the filing of certain additional information on SEDAR+, adding a requirement that such filed information include disclosure about ownership of equity equivalent derivatives would not introduce a significant incremental compliance burden. It would not be necessary to require that the public broadcast communication itself (such as a press release) include the disclosure.

16. 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?

Requiring this disclosure would be consistent with the rationale for requiring that such information be included in an EWR.

Early Warning Reporting Triggers

17. 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.

No comment.

18. 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.

We question the need for this significant change and whether there is currently a “gap” in the rules in not requiring a filing on formation of a joint actor relationship. We also note that the Notice and Request does not make a case for any harm caused as a result of this “gap”.

Arguably, the need for early warning of the formation of joint actor relationships has, if anything, diminished given significant changes to the legal landscape when the early warning report requirement was introduced. Hostile take-over bids are now relatively rare. The former 21-day bid period has since been extended to 105 days, any-or-all bids and waivable minimum tender conditions are no longer permitted, and partial bids are generally not feasible. In addition, in the realm of proxy contests, advance notice by-laws have become quite standard, such that the ability of a group of shareholders to ambush a meeting has almost entirely been curtailed. Advance notice by-laws also commonly require disclosure of any joint actor relationships. Shareholders soliciting proxies also have separate disclosure obligations where joint actor relationships can be required to be disclosed.

Another concern is that the question of when precisely a joint actor relationship is formed is nebulous. Creating a positive obligation to immediately report the formation of such a relationship will undoubtedly provoke allegations of failures to comply or of late reporting.

We would also expect that the proposed change would require premature disclosure in many situations where shareholders are working privately to negotiate a potential transaction with the issuer. In many situations, although a joint actor relationship may have been formed, issuers will prefer to engage confidentially pursuant to a confidentiality and standstill agreement. The public disclosure of a joint actor relationship and the parties’ intentions with respect to what otherwise would be a private negotiation could result in significant market disruption and could even jeopardize the issuer’s ability to consummate a favourable negotiation.

Related issue re “Future Intention” Disclosure

We also make a similar observation regarding the proposed new guidance in section 3.3 of NP 62-203 regarding the obligation to update an EWR for a change in “future intentions”. While we acknowledge the basis for the CSA’s observation that EWR filers often use boilerplate disclosure about their intentions and rarely update their reports to disclose changes to their “future intentions”, the Proposal does not identify in what way such failures are problematic, particularly in light of the significant changes to the bid regime adopted in 2016.

More often than not, a shareholder will approach an issuer privately regarding a potential transaction and the filing of an updated EWR regarding that engagement (or the shareholder’s intention to approach the issuer) is incompatible with the issuer’s own preference for a confidential process. We recommend that the CSA consider what policy objectives earlier public disclosure of future intentions would serve.

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

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

No comment.

20. 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?

No comment.

Settlement Period

21. Should the tendering process payment period be changed from a maximum of 3 business days to a maximum of one business day to align with the settlement cycle for securities trades?

No comment.

22. Are there any practical impediments or challenges to shortening the tendering process payment period from the current 3 business day maximum? If so, please explain.

No comment.

Additional Comments

Calculation of early warning reporting thresholds.

The proposed new guidance for section 3.6 of NP 62-203 regarding the treatment of convertible securities that are not exercisable within 60 days does not align with our understanding of how section 5.2 of NI 62-104 has been typically interpreted.

Moreover, the example calculations offered yield incongruous results.

The new guidance states that securities underlying a convertible security not exercisable within 60 days should nevertheless be included in the numerator when the convertible security is acquired, but not included on a subsequent filing. That approach could result in a filer's securityholding percentage dropping if, after an initial filing that included the reporting of an acquisition of a warrant that is exercisable more than 60 days out, the filer acquires more shares, but then is supposed to exclude those warrants from the later calculation.

The guidance states that securities underlying a convertible security should not be included in a denominator in calculating the securityholding percentage. In some circumstances (such as convertible debt with a potentially large number of underlying shares), that approach could result in a filer having a securityholding percentage in excess of 100%. This guidance also conflicts with the proposed guidance to conduct calculations on a "partially diluted basis" in new Section 3.7 of NP 62-203.

We trust you find the above satisfactory; however, should you have any questions concerning the comments in this letter, please do not hesitate to contact Alexander Moore ([redacted] or Olga Kary [redacted]

Yours truly,

(signed) *"Alexander Moore"*

(signed) *"Olga Kary"*