August 11, 2026

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

Submitted via: https://www.securities-administrators.ca/consultations/

And via email to:
Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames,

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

The CSA has issued a *Notice and Request for Comment- Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes* (the Proposed Amendments). This includes proposed changes intended to "reduce regulatory burden and enhance the integrity of the issuer bid, take-over bid and early warning reporting regimes through clarifying amendments and supplemental policy guidance".

CCGG's members are Canadian institutional investors that together manage approximately $6 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A representative list of our Members is attached to this submission.

We are pleased to have the opportunity to provide our views on this important and wide ranging consultation. Below are our general comments on those topics most relevant to CCGG's mandate, followed by responses to those specific questions relevant to our general views. We have not commented on all the Proposed Amendments.

GENERAL FEEDBACK:

The bar for finding shareholders to be acting jointly should remain high

We have concerns that the combination in the Proposed Amendments of changes to the early warning reporting (EWR) regime for joint actors is significantly tilting the disclosure framework in a manner that may create either a chill on shareholder communication or uncertainty as to the timing of disclosures. The formation of a joint actor relationship or the scope of relationships caught by the disclosure requirements in the Proposed Amendments is ripe for encouraging defensive tactics from issuers, especially those facing shareholder dissatisfaction or challenge.

The current EWR is only triggered if parties are acting jointly or in concert **and** there is a subsequent acquisition by one of the joint actors such that the joint actors collectively hold 10% or more of the outstanding voting or equity securities of any share class. If there is no acquisition, then no filing is required even if joint actors collectively hold, or have beneficial ownership or direct control over 10% or more of a share class.

The CSA's rationale for the Proposed Amendments is as follows:

> One of the policy rationales for the early warning system is to alert the market of the identity of holders of 10% or more of a class of an issuer's outstanding voting securities because such information may be material information to investors given the potential that such persons can affect the outcome of control transactions, the composition of the reporting issuer's board of directors and the approval of significant proposals and transactions. **We believe that policy purpose is equally engaged when 2 or more securityholders who are acting jointly or in concert collectively hold 10% or more of a class of an issuer's outstanding voting or equity securities even where each is individually below the 10% threshold[1].** (Emphasis added)

[1] Canadian Securities Administrators, B.6 Request for Comments, *CSA Notice and Request for Comment – Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes* (2026), 49 OSCB 4433, at 4441.

The CSA's proposal to address this 'policy purpose' is to "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 person when they began acting jointly or in concert with each other"[2]. The shares would likewise be deemed 'disposed' when the joint actor relationship ceases to exit.

The CSA is clear that the Proposed Amendments are intended to address the decision of the BC Securities Commission in *Re Northwest Copper Corp.* which states:

> "We find that the bar for a finding that parties are acting jointly or in concert is appropriately set relatively high, as is reflected in the presumption and the deeming provision set out in section 1.9(1) of N1 62-104. **<u>Disclosure of shareholder blocks is important but so is the free flow of information and opinion among shareholders of a public company. We conclude that it is better to insist on sufficiently clear, convincing and cogent evidence that parties are acting jointly or in concert and take the risk that by doing so, some groups will fly under the radar, than to allow reliance on speculation to create a climate that stifles discussion among shareholders</u>**"[3]. [Emphasis added]

The CSA has not addressed the BCSC's clear statement that on balance, the policy choice in NI 62-104 has been to prioritise the free flow of information among shareholders absent a clear signal through an acquisition that a formal joint actor relationship has been established. In our view, the Proposed Amendments are not addressing a 'gap' or making a 'clarification' as suggested in the consultation, they are signalling a fundamental shift in the EWR and lowering the 'high bar' confirmed in the *Northwest Copper* decision.

We are particularly concerned with how the Proposed Amendments could incent defensive tactics such as litigation by issuers against shareholders alleging 'stealth vote no campaigns' where institutional investors vote against directors absent a proxy contest. There is no clear guidance provided as to how investors can prove a negative in the absence of "clear, convincing and cogent evidence" that there is a joint actor relationship (currently demonstrated through an acquisition).

What kinds of shareholder information and opinion may be shared between shareholders without attracting a finding of acting jointly and in concert?

Do shareholders need to establish that their combined shareholdings do not exceed 10% before having a conversation[4]?

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[2] Ibid.
[3] *Re: Northwest Copper Corp*, 2023 BCSECCOM 602, at para 204.
[4] Illustrative examples provided by Members include: it is common practice for corporate engagement meetings with management to have two to three major shareholders grouped together (by a conference host for example) where participants are discussing views prior to management arriving without establishing how much either party owns; investors talk about specific stocks, both weak performers and strong, all the time. Discussion is part of how investors think and form their opinions. Investors may float ideas during

Is the free flow of information between shareholders holding more than 10% no longer permissible absent a filing?

In our view the Proposed Amendments lack clarity as to what conduct constitutes "acting in concert" in order to capture only scenarios of true co-ordination and introduce too much uncertainty. They move the policy balance too far toward earlier and unclear disclosures or stifle shareholder discussion. CCGG does not support these Proposed Amendments.

Enhanced Disclosure of Equity Derivatives in Specified Circumstances

The CSA is "proposing amendments to enhance the quality of disclosure in respect of equity equivalent derivatives and agreements, arrangements, or understandings that alter economic exposure to an issuer in the particular circumstances of a take-over bid or proxy solicitation for which an information circular is required to be sent"[5]. The CSA is **not** proposing real-time disclosures of equity equivalent derivatives during stake-building in anticipation of a bid or proxy solicitation. Likewise, the CSA is **not** proposing any new disclosures of equity equivalent derivatives for proxy solicitations made in reliance on the "quiet solicitation" or "public broadcast" exemptions.

We welcome the CSA's proposal to enhance disclosure of equity derivatives in this targeted manner.

Transparency regarding the existence of equity equivalent derivatives during active take-over bids and/or proxy solicitations where a proxy circular is required to be sent provides shareholders with the information they need to support voting decision-making at the relevant time, when there is a "formal, public overture for control". This approach strikes an appropriate balance because it does not overreach or create ongoing reporting obligations for shareholders, especially passive investors, which could otherwise be overwhelming[6]. Especially since it is not easy to decipher the combined economic impact of layered, sophisticated equity derivatives.

Disclosure and timing requirements for acquirors' plans or future intentions

The proposal is intended to amend the early warning system guidance to require more detailed information in respect of the transaction that triggered the filing of an EWR and the "plans or future intentions of the acquiror or a joint actor which relate to certain enumerated actions including, but not limited to, the acquisition or disposition of additional securities, a corporate transaction, a change in the board of directors or management, or a solicitation of proxies". The CSA notes that existing disclosures are either boilerplate or so broad as to capture any eventuality

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conversations but following discussion decide the opposite. It is very difficult to have a clear line from conversations to actions.

[5] Supra, note 1, at p. 4436.

[6] See CCGG Letter to the CSA Re: Proposed Amendments to Multilateral Instrument 62-104 Takeover Bids and Issuer Bids: National Policy 62-203 Take-over Bids and Issuer Bids; and National Instrument 62-103 Early Warning System and Related Take-Over Bids and Insider Reporting Issues, July 12, 2013.

and therefore are of little utility in signalling changes in intentions or the initiation of specific steps toward advancing an enumerated action.

CCGG welcomes the proposal to ensure that disclosures are timely, up to date and transparent. We have concerns, however, with the manner in which the principle is being implemented. The CSA is proposing guidance to clarify its expectations with respect to future plans or future intentions of an acquiror or joint actor that would require updating the most recent EWR, including:

- Every time an acquiror has to file an EWR it should re-assess the accuracy of its most recent EWR in respect of its (and any joint actor's) plans or future intentions;
- As soon as a change in plans or future intentions occurs or if the acquiror or any joint actor has taken "irrevocable steps to effect a potential transaction"; and
- "Significant steps" by an acquiror or any joint actor with respect to a particular transaction or event may individually or taken together constitute a change.

The CSA clarifies that the analysis will be a factual determination derived from the specific transaction. The CSA is clear that an "irrevocable step" is something less definitive than the execution of an agreement to enter into a transaction, the commencement of a take over bid, or the public announcement of a proxy solicitation and while it provides limited examples, they are not exhaustive[7]. This introduces ambiguity rather than clarity[8].

In our view, the proposed amendments could also lead to premature disclosures of future plans or intentions that have not yet fully crystalized, particularly when taken together with the proposed changes to joint actor disclosures (discussed above) that may impact share prices to the detriment of other non-involved/non-joint actor shareholders. This concern is likely the root of existing cautionary disclosures and the practice of not updating the EWR until a definitive agreement, take-over bid or public announcement of a proxy solicitation has been made.

RESPONSES TO SPECIFIC QUESTIONS:

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?

CCGG supports the concept of an "equity equivalent derivative".

[7] Supra, note 1, at p. 4463.
[8] CSA proposes to reshape share buybacks and shareholder reporting - Osler, Hoskin & Harcourt LLP

The Proposed Amendments define "equity equivalent derivative" as "one or more derivatives, that are referenced to, or derived from, a voting or equity security of an issuer and which provide the holder, directly or indirectly, with an economic interest that is substantially equivalent to the economic interest associated with beneficial ownership of the security"[9]. This definition appropriately links the voting/security interest to the economic interest of the issuer held by the shareholder without conflating them. The CSA has provided guidance as to the kinds of instruments that would generally fall within this definition including those having a rate of return between 90% and 110% of the reference security, and cash settled equity total return swaps[10].

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?

CCGG agrees with this proposal. It is limited to circumstances where transparency to reduce informational asymmetry between activist shareholders and non-involved shareholders is most needed: when shareholders are being asked to make a decision in their own best interests and vote pursuant to a formal process. At the same time, it does not create burdensome obligations on all shareholders who may be using equity equivalent derivatives for other purposes (e.g. ordinary course hedging, cash and liquidity, management, etc.).

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?

CCGG does not have a position on this question.

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?

CCGG does not believe that equity equivalent disclosure is required under such circumstances. The Proposed Amendments strike the appropriate policy balance between requiring additional disclosures of economic interests in formal bids or proxy solicitations where an information circular is required while preserving shareholders' ability to communicate views publicly.

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

[9] Supra, note 1, at p. 4449.
[10] Ibid., at p. 4462, see proposed new Section 3.1 of *National Policy 62-203*.

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?

We do have some questions/concerns about the specific amendments proposed to implement the enhanced disclosures, notably the requirement of a six month look back and disclosure of relationships that are no longer in existence at the time of the take-over bid/proxy solicitation. Our concern with this requirement is that capturing past relationships no longer in existence could drive inferences about relationships that could be misleading[11].

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.

CCGG does not have a position on this question.

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.

For the reasons set out in our general comments above, CCGG does not support these Proposed Amendments.

CONCLUSION

We thank you again for the opportunity to provide you with our comments. Please do not hesitate to contact our Chief Executive Officer, Catherine McCall, at cmccall@ccgg.ca or our Director of

[11] Additionally, a Member raised questions as to the implementation implications of this requirement noting that where an investor has stopped covering a company, it may have to pay a service to backwards monitor developments which may be complex. Conversely, another Member had a different perspective noting that if an equity equivalent derivative had been unwound by the time of the of the offer or proxy solicitation this is relevant as an indicator of commitment to the bid/solicitation.

Policy Development, Sarah Neville, at sneville@ccgg.ca if you would like to discuss the matters in this letter further or if we can be of any assistance.

Yours truly,

[redacted]

Dawn Jia, Chair
Canadian Coalition for Good Governance

CCGG MEMBERS 2026*

- Alberta Investment Management Corporation (AIMCo)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Capital Group Canada
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- CPP Investments
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Fondation Lucie et André Chagnon
- Foyston, Gordon & Payne Inc. (FGP)
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- Investment Management Corporation of Ontario (IMCO)
- iA Financial Group
- Jarislowsky Fraser
- La Caisse
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau Global Investment Management
- Morguard Lincluden Global Investments
- National Bank Investments
- NEI
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Provident[10]
- Public Sector Pension Investment Board (PSP Investments)
- Qube Investment Management Inc.
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management
- Summerhill Capital Management
- Teachers’ Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension Fund

***As a coalition, CCGG strives to build and reflect a consensus but, while supportive of CCGG’s mission and mandate, CCGG’s Members are not individually bound by CCGG’s positions.**