May 14, 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/

**Re: CSA Notice and Request for Comment – Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes (May 14, 2026)**

I am writing in my personal capacity. The views in this submission are my own.

I have chosen to comment on three issues only. They are the issues in the consultation that I believe may impact retail investors most consequentially. The technical and housekeeping amendments — the codification of Dutch auction relief, the convertible-securities clarification, the T+1 settlement alignment, the Non-Reporting Issuer Exemption expansion — will attract sufficient comment from the takeover bar. The retail investor perspective is not at risk of being under-represented on those points. It may be at risk on the three I address below.

**1. Aggregation of equity equivalent derivatives for early warning purposes**

The CSA has decided not to require aggregation of beneficial ownership and economic interests in equity equivalent derivatives for the purposes of calculating early warning reporting thresholds. I think the decision warrants reconsideration.

The United Kingdom, France, Hong Kong, and Australia require aggregation. The United States considered aggregation in 2022 and ultimately did not adopt it in 2023, citing concerns substantially similar to those the CSA has articulated: insufficient evidence of widespread misuse, administrative complexity, breadth, and possible chilling of activism. The CSA's proposed approach aligns with the US position and diverges from the UK, French, Hong Kong, and Australian positions. Alignment with the US position is a choice, not an inheritance — and, in this case, I believe it is the wrong choice.

The Canadian takeover regime is distinguished from the US regime by a sustained, deliberate choice to prioritize minority security holder protection over transactional flexibility. MI 61-101 imposes obligations on related-party transactions and business combinations that have no US equivalent of comparable rigour. The mandatory bid threshold of 20% is materially lower than the analogous threshold in the United States. The issuer bid regime, prior to the introduction of the Selective Repurchase Exemption proposed in this consultation, has rested on equal treatment principles that the US regime has long since abandoned. The Canadian regulatory architecture, taken as a whole, more closely resembles the UK and Commonwealth tradition than the US tradition on questions of minority protection.

Selectively adopting US-style disclosure-only treatment on derivatives, while maintaining stronger minority protections elsewhere, creates an internal inconsistency. It also imports the specific weakness of the US approach — the circularity of relying on absence of evidence in a regime where mandatory aggregation is precisely what would generate evidence — into a Canadian framework that does not otherwise reflect US regulatory philosophy.

The Bison decision, cited in the consultation, is an existence proof that abusive use of equity equivalent derivatives does occur in Canada. The Alberta Securities Commission panel found that the bidder's use and disclosure of cash settled total return swaps was "clearly abusive of both the capital markets and the target's securityholders." Detection in that case only happened because of after-the-fact regulatory scrutiny in the context of a contested bid, not on routine market disclosure. The CSA is treating the case as an anomaly. It should be treated as a signal.

The CSA's proposed disclosure-only response is narrowly scoped. It engages only when a takeover bid or non-management proxy circular is formally launched. That timing concedes the substantive issue. Hidden ownership, empty voting, and parking — the activities the consultation itself identifies as concerns — accrue during the stake-building phase, before any formal overture for control. Disclosure after the launch of a bid is a post-mortem, not a constraint.

I acknowledge that aggregation imposes compliance burden and may, at the margin, affect activist investment strategies. Those concerns are real, but they are not unique to Canada. The experience of the United Kingdom, France, Hong Kong, and Australia suggests that aggregation can be administered in developed capital markets without displacing legitimate activism altogether. Aggregation is a burden only on parties who have crossed a 10% economic-exposure threshold. At that level of exposure, disclosure is the entire point of the early warning regime. The instrument used to cross the threshold should not determine whether the regime applies.

I urge the CSA to require aggregation of beneficial ownership and economic interests in equity equivalent derivatives for the purposes of calculating the 10% early warning reporting threshold, consistent with the approach adopted in the United Kingdom, France, Hong Kong, and Australia, and consistent with the Canadian regulatory tradition of prioritizing minority protection.

**2. The Selective Repurchase Exemption**

The proposed Selective Repurchase Exemption introduces, for the first time in Canada, a private-agreement exemption from the issuer bid regime. It allows an issuer's board to negotiate buybacks from up to five identified blockholders, in up to five transactions, totalling up to 5% of a class, in a 12-month period, outside the equal-treatment architecture that has historically defined the issuer bid regime in Canada.

I want to be precise about the nature of my objection. I am not arguing that retail securityholders will be financially worse off in the typical transaction. The mitigants the CSA has built in — discount to market, liquid market requirement, board determination on post-bid liquidity and market impact, after-the-fact news release — are reasonably designed to ensure that non-participating shareholders retain comparable market exit opportunities. In the typical case, the CSA is correct that a non-participating retail holder will not be economically injured.

My objection is to the structural shift, not the per-transaction economics. The Canadian issuer bid regime has rested on equal treatment as a rule, not as a way of preventing measurable harm. All securityholders are entitled to equal access to issuer-driven liquidity events — not merely to a guarantee that they will not be worse off when others are favoured. The Selective Repurchase Exemption replaces that rule with a case-by-case judgment that the favoured treatment did no measurable damage. That is a different regime.

The CSA's consultation effectively concedes the point. It notes that the conditions are designed to "mitigate concerns that a blockholder may be receiving preferential treatment such that the offer should be made to all securityholders." Mitigating the concern is not the same as avoiding the conduct. The policy question is whether the Canadian regime should be reorganized around mitigation of preferential treatment rather than its avoidance. I do not believe that question has been adequately surfaced in the consultation.

One specific design feature warrants comment in addition to this structural objection. The consultation appears to treat the discount-to-market requirement as a sufficient answer to the greenmail concern raised in question 11. For me, that conclusion is reached too quickly. Greenmail in the present context need not take the form of an above-market price;

it can take the form of issuer-financed liquidity that the seller could not otherwise obtain. A holder of a block large enough to be disruptive — capable of mounting a contested proxy contest, a public campaign, or a hostile bid — cannot exit on-market at the screen price, because the sale itself impairs that price. A negotiated repurchase at a discount to the screen price can therefore remain economically favourable to the seller measured against the seller's realizable open-market alternative. The differential between those two prices is value transferred from the issuer to the selling securityholder, and it is value transferred in consideration of the seller's withdrawal from the field. Neither mitigant catches the transfer. The discount-to-market requirement compares the buyback price to the market price, when the relevant comparison is to what the seller could actually achieve by selling into the market. The board determination requirement asks whether resolving the situation is in the issuer's interest, not whether the price paid favours the seller. The exemption affords retail securityholders no basis on which to distinguish a buyback negotiated on arm's-length terms from one that is, in substance, a settlement.

I am not arguing against the exemption itself. Codifying frequently granted relief is a sensible objective, and the equal-treatment concern can be addressed within the proposed framework. Two additions would help materially: (a) a cooling-off period of at least six months between selective repurchases from the same securityholder; and (b) enhanced board disclosure explaining why a selective repurchase, rather than an NCIB or formal issuer bid, was the appropriate mechanism in the specific circumstances.

**3. Plans and future intentions disclosure in early warning reports**

The CSA has correctly identified the problem in the consultation. Plans-and-intentions disclosure in EWRs has become boilerplate. Acquirors rely on broad reservation-of-rights language to avoid filing updated reports when their intentions have in fact changed. Updates are deferred until the execution of a definitive agreement, by which point the disclosure is no longer useful to other securityholders considering how to respond.

The proposed response is companion policy guidance. I understand the concern with making this a binding rule. Intent evolves. The line between exploratory consideration and a settled change in intentions is hard to draw. A poorly designed rule could chill legitimate engagement, force premature disclosure of preliminary strategic thinking, or push acquirors into defensive over-reporting that buries the useful signal.

These concerns are real, but the answer is to draft the rule carefully — not to leave it as guidance. Two of the triggers the CSA has already named work as a rule: taking irrevocable steps toward a potential transaction and making a public announcement inconsistent with prior disclosure. A party has either taken irrevocable steps or it has not; it has either made an inconsistent public announcement or it has not. Those two triggers alone would capture much of the conduct the CSA is concerned about.

The harder case — significant steps taken individually or collectively — is genuinely judgment-sensitive. But it is judgment-sensitive whether it is framed as a rule or as guidance. Guidance does not reduce the underlying interpretive difficulty; it only reduces the consequences of failing to interpret it correctly. Where the CSA has identified a pattern of market practice that is inconsistent with the policy purpose of the early warning system, reducing the consequences of non-compliance is exactly the wrong response.

I urge the CSA to convert the substantive elements of the proposed guidance in section 3.3 of NP 62-203 into a binding requirement, while preserving guidance treatment for the more judgment-sensitive elements where rule-based intervention would be premature.

**Conclusion**

This submission pushes back on three CSA balancing choices: the choice of disclosure over aggregation on derivatives, the choice of transactional flexibility over equal treatment on selective repurchases, and the choice of guidance overrule on plans and intentions. The choices are connected. Each represents a calibration of the Canadian regime in the direction of regulatory burden reduction and transactional flexibility, with two of the three (derivatives and selective repurchase) bringing the regime into closer alignment with US practice. Each is defensible in isolation. The cumulative effect is a shift in the regime's balance between issuer flexibility and minority protection.

The CSA is entitled to make that shift. It should be made deliberately, on the record, and with the retail investor perspective considered rather than assumed to be addressed by the mitigants attached to each individual proposal. Mitigants are calibrated to specific transactions. They do not, individually or together, substitute for an explicit policy judgment about the appropriate balance between issuer flexibility and minority protection in the Canadian regime as a whole. It is that judgment, more than any specific drafting choice in the proposed amendments, that warrants the CSA's reconsideration.

Yours truly,

[redacted]