Scotiabank.

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The Bank of Nova Scotia ("Scotiabank")
Global Banking and Markets ("GBM")
Scotiabank North
40 Temperance St, 6th Floor
Toronto, ON M5H 1Y4

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Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Dear Sirs/Mesdames:

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

We appreciate the opportunity to submit this comment letter 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 published on May 14, 2026 (the "**Request for Comment**"). We are writing on behalf of Scotiabank and providing comments on the amendments and changes proposed in the Request for Comment (collectively, the "**Proposed Amendments**") from the perspective of its Global Banking and Markets division. Global Banking and Markets (GBM) conducts Scotiabank's wholesale banking and capital markets business with corporate, government and institutional investor clients.

We are generally supportive of the Proposed Amendments and welcome the CSA's initiative to modernize these regimes in an effort to make the Canadian capital markets more competitive. Our comments are presented below and answers to certain of the specific questions posed in the Request for Comment are attached as an Appendix.

Selective Repurchase Exemption

We welcome the proposed Selective Repurchase Exemption described in the Proposed Amendments, which will provide Canadian issuers greater ability to pursue selective buybacks without seeking exemptive relief. However, we encourage the CSA to consider revising some of the conditions of the Selective Repurchase Exemption to further foster capital formation and capital retention in Canada.

With respect to the repurchase limit, we would propose that the limit be increased from 5% to at least 10%. This will provide greater flexibility to Canadian issuers in making capital allocation decisions appropriate for their stage of development and will promote a more level regulatory playing field for Canadian issuers with U.S. issuers, who are able to undertake selective buybacks without any similar limit.

In particular, a 10% repurchase limit would better align Canadian-domiciled issuers' ability to engage in certain equity-hedging transactions using over-the-counter (OTC) derivatives with that of their U.S counterparts. Canadian domiciled issuers are hampered in their ability to undertake capital formation via convertible bond offerings compared to U.S. issuers because the issuer bid regime prevents them from undertaking capped call options and other derivative-based issuer repurchase arrangements that address the dilution inherent in a convertible bond issuance. The proposed 5% repurchase limit for the Selective Repurchase Exemption will not be sufficient to permit such derivative transactions. In such offerings in the U.S., a net share settled capped call option (where the principal amount is repaid in cash, with only the in-the-money value of the conversion option being settled in shares, which is the most commonly used settlement method) results in the issuer being delivered, on average, approximately 8-9% of its issued and outstanding shares. We believe the other conditions to the Selective Repurchase Exemption, together with other regulatory obligations that could apply to a selective repurchase of a large block, such as timely disclosure obligations and insider and early warning reporting requirements, are sufficient to safeguard market integrity.

We also note that the five-person limit in the Selective Repurchase Exemption could be difficult to comply with as part of these equity-hedging transactions using OTC derivatives. These transactions are often syndicated and may involve more than five counterparty banks. We would propose that the limit be removed, or at a minimum increased to ten persons in aggregate. Another alternative to address this issue would be to provide that a syndicate of financial institutions that are entering into OTC derivative arrangements with the same issuer concurrently on the same terms is deemed to be a single purchaser for purposes of the five-person limit. Furthermore, the proposed limit of five transactions within a 12-month period may also present challenges, as certain issuers may require multiple OTC derivative transactions to hedge more than one convertible bond issuance within a 12-month period. This is a scenario that commonly arises in the U.S. market. Increasing the proposed limit from five to ten transactions would provide issuers greater flexibility to accommodate multiple offerings in a given 12-month period.

The proposed discount requirement should not be problematic for the aforementioned derivative transactions, provided the value of the consideration is determined on the basis of the closing price of the class of subject securities on the date of the bid.

Should the CSA not be supportive of revising the conditions of the Selective Repurchase Exemption as we have proposed, Scotiabank would strongly suggest that, in the alternative, the CSA adopt a specific exemption from the issuer bid rules for these equity-hedging transactions using OTC derivatives and any such exemption should be agnostic to the type of derivative transaction or hedging strategy employed by the issuer. It should accommodate call spread and capped call transactions, for example, but should also be broad enough to capture accelerated share repurchase and other derivative-based issuer repurchase structures.

Because these derivative transactions are not possible in Canada, a number of Canadian issuers have completed convertible bond offerings in the U.S., with U.S. counterparty banks offering the capped call options. In 2025, 77 convertible bond offerings involving a concurrent call option or other issuer repurchase arrangement were completed in the U.S. that raised an aggregate principal amount of US$57.42 billion, including 9 offerings by Canadian issuers that raised US$2.7 billion in aggregate. If Canadian domiciled issuers were able to undertake these transactions in Canada, a similar level of activity as in the U.S. (and adjusting for the relative size of the Canadian market) would result in a range of C$5 to 10 billion raised in Canada. This is a clear example of capital flight to the U.S. as a result of Canadian securities laws that restrict capital formation in Canada which Canadian securities regulators should urgently address to improve the competitiveness of Canadian capital markets.

Enhanced Disclosure of Equity Equivalent Derivatives in Specified Circumstances

Scotia generally supports the proposed targeted disclosure of equity equivalent derivatives in take-over bids and proxy solicitations where an information circular is required, as such disclosure will improve transparency and address information asymmetries regarding market participants' interests. However, it is Scotia's view that the disclosure obligations should not require identification of swap providers or intermediaries providing derivatives to parties involved in such transactions. It is not clear why such disclosure is relevant to the market when the counterparty banks have no direct economic or strategic interest in the transaction. Companies enter into derivative transactions for many valid purposes unrelated to a take-over bid or proxy fight. If derivative counterparty banks are concerned that they may in the future become caught up in a hostile or contested situation by association, which may result in reputational harm to the bank, they may be less willing to provide derivatives to parties who could in the future be potential bidders or activists. This would not be beneficial to issuers and other market participants. Moreover, we do not see the relevance of the proposed six-month look-back period that would require disclosure of derivatives that are no longer in place. Derivatives that have been terminated are not pertinent to the bidder's or activist's economic interests in the issuer. Any new disclosure requirements should be supported by evidence of market harm, a need for increased transparency or a clear policy rationale. We do not see any of the foregoing in support of the proposed disclosure of derivative counterparties, and we note there is no equivalent U.S. requirement.

Disclosure and Timing Requirements for Acquirors' Plans or Future Intentions

The Proposed Amendments include new guidance regarding plan or future intention disclosure in early warning reports. The proposed guidance is unclear and suggests that the CSA may be seeking disclosure of changes in an investor's intentions earlier than the current market practice of updating disclosure in connection with execution of a definitive agreement, commencement of a take-over bid or public announcement of a proxy solicitation. We submit that any guidance or amendments that could require premature disclosure of a transaction will raise serious concerns for issuers and investors and could put a chill on transactions. We would encourage the CSA to maintain the status quo on this issue and remove the proposed guidance.

Early Warning Reporting Calculations

We respectfully submit that the proposed clarifying guidance regarding inclusion of securities convertible into voting or equity securities of a reporting issuer in the calculation of holdings for purposes of early warning reporting thresholds is inconsistent with long-standing Canadian market practice. We recommend the CSA remove the proposed guidance from the Proposed Amendments.

Removing the 5% Market Purchase Exemption

We are aware of recent uses of the 5% Market Purchase Exemption and do not think there is a compelling policy reason to remove this exemption.

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We fully agree with the CSA's goal of instilling confidence in capital markets, promoting capital formation and improving the competitiveness of the Canadian capital markets. However, as noted above, we think there are areas in the Proposed Amendments where the CSA can go further in order to achieve this goal, and there are areas where we think the Proposed Amendments undermine this goal.

Thank you for the opportunity to comment on the Proposed Amendments. We would welcome the opportunity to discuss these issues directly with CSA staff.

Yours very truly,

The Bank of Nova Scotia

By: Paul O'Hea
Managing Director
Scotiabank Global Banking & Markets
[redacted]

[redacted]

Cc: Victoria Wilson
Vice President & Associate General Counsel
Scotiabank Global Banking & Markets
[redacted]

Raj Sachdeva, JD, CFA
Vice President, Head of GBM&T Compliance Canada
Scotia Capital Inc.
[redacted]

The Bank of Nova Scotia ("Scotiabank")
Global Banking and Markets ("GBM")
Scotiabank North
40 Temperance St, 6th Floor
Toronto, ON M5H 1Y4

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.

See discussion above. We would support increasing the repurchase limit to at least 10% to provide flexibility to issuers in making capital allocation decisions in the best interests of the company. We also think this exemption should explicitly state that all classes of listed securities are eligible.

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.

See our comments above. We would suggest providing a higher limit of at least 10 persons.

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. 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?

Scotia has no concerns with the proposed liquid market condition.

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?

Scotia has no comments on the content of the news release.

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?

See comments above as this relates to pricing of equity hedging transactions.

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?

We agree that the limit under the Selective Repurchase Exemption should not affect the availability of other issuer bid exemptions.

On a related note, Scotia would like to see a harmonized set of rules for normal course issuer bids on all Canadian stock exchanges.

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?

No.

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?

No. We do not believe the Selective Repurchase Exemption should be limited to issuers having an operative NCIB. In particular, as it relates to equity hedging transactions, many issuers looking to hedge inherent equity risk when raising equity or contingent equity capital may want to rely on this exemption but will not have an active NCIB in place.

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.

See above discussion of challenges as they relate to equity hedging transactions.

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

We do not foresee any unintended consequences associated with the Selective Repurchase Exemption.

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?

Scotia does not think that the Selective Repurchase Exemption may give rise to "greenmail" concerns.

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?

Scotia has no concerns with the proposed definition of an "equity equivalent derivative".

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?

In general, yes. We refer you to our comments above.

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?

We do not believe the proposed new disclosure requirements are likely to affect the number or quality of take-over bids or proxy solicitation campaigns. However, as discussed above, we do have concerns that the disclosure required about derivative counterparties will have a negative impact on the willingness of such counterparties to enter into arrangements with potential bidders and activists.

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?

Scotia thinks that the proposed disclosure requirements should equally apply to a person or company soliciting proxies in reliance on the exemptions noted above.

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?

We refer you to our comments above. We do not see the relevance of arrangements that are no longer in place.

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.

We are generally supportive of the inclusion of a deemed acquisition provision in respect of an issuer that becomes a reporting issuer.

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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?

While Scotia is supportive of shortening the tendering process payment period, doing so would require confirmation that transfer agents and depositaries would be able to operationalize such a shorter period.

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.

Please see the response to question 21.