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August 12, 2026

By email:

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

Re: Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes

Dear Staff:

Introduction

We are writing in response to the Canadian Securities Administrators' (**CSA**) Notice and Request for Comment dated May 14, 2026 (**Notice**) regarding the proposed amendments and changes to the issuer bid, take-over bid and beneficial ownership reporting regimes under National Instrument 62-104 - *Take-Over Bids and Issuer Bids* (**NI 62-104**), National Instrument 62-103 - *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**), National Instrument 51-102 - *Continuous Disclosure Obligations* (**NI 51-102**), and related instruments, rules and policies (collectively, the **Proposed Amendments**).

These comments are provided by the partners and counsel of Torys LLP who are signatories below, in their personal capacities, and not on behalf of the firm or any of its clients.

Capitalized terms used herein and not otherwise defined have the meaning set forth in the Notice.

We appreciate the efforts of the CSA to provide reporting issuers with greater flexibility to repurchase their own securities, enhance transparency regarding certain derivative ownership interests, and reduce regulatory burdens.

We have set out our comments below with respect to certain aspects of the Proposed Amendments.

1. Proposed Selective Repurchase Exemption

We are supportive of the proposed selective repurchase exemption and appreciate the CSA's efforts to address market concerns by providing issuers with a mechanism to repurchase securities from a limited number of securityholders without incurring the cost and delay of a substantial issuer bid.

With respect to the appropriateness of the 5% limit, we believe that anything lower than 5% would limit the utility of the exemption and undermine its purpose. If the selective repurchase exemption is being introduced primarily as a means of facilitating repurchases of "meaningfully sized blocks of securities," 5% should be considered the minimum threshold to achieve that goal. While we believe there are arguments in favor of setting a higher limit, we appreciate that there may be a desire to create symmetry with the 5% limit under the normal course purchase exemption to the takeover bid rules. We note, however, that in support of the 5% limit, the CSA cites the fact that an issuer could potentially acquire up to 20% of the securities of a class in any 12-month period by relying on a combination of the proposed exemption, together with the NCIB Exemption and the employee, officer, director, and consultant exemption in section 4.7 of NI 62-104. This rationale assumes that the issuer in question is listed on a designated exchange and has a sufficient public float such that it can repurchase 10% of its issued and outstanding securities under the NCIB Exemption, and that its employees, officers, directors and consultants have significant shareholdings. In practice, the employee, officer, director and consultant exemption in section 4.7 of NI 62-104 is not as commonly used as the NCIB Exemption, and repurchases under different exemptions or under a substantial issuer bid are often pursued for different purposes. Accordingly, when considering the appropriate limit for the selective repurchase exemption, we would discourage the CSA from aggregating the securities available for repurchase under the various exemptions. Likewise, given the different purpose of a buyback under an NCIB (generally, as part of an issuer's ordinary course management of its balance sheet, to return capital to shareholders at a time when the issuer believes its shares are undervalued and it has excess cash to do so), we agree that purchases made in reliance on the proposed selective repurchase exemption should not reduce the maximum number of securities that an issuer may acquire under the NCIB Exemption. We also agree that an issuer should not need to maintain an operative NCIB in order to make use of the proposed selective repurchase exemption.

While the proposed selective repurchase exemption mirrors some of the exempt takeover bid conditions in the normal course purchase exemption (5% over any 12-month period) and the private agreement exemption (purchases from no more than 5 persons in the aggregate), it is not clear that the additional restriction that there be no more than 5 transactions in the aggregate in any 12-month period is necessary. We believe the 5-person and 5% annual limits should be sufficient to address any regulatory concerns regarding the establishment of a de facto buyback program with select shareholders. If the 5-transaction limit survives, we would encourage the CSA to consider publishing guidance regarding its expectations on how separate transactions with the same selling security holder are to be assessed for this purpose.

We do not expect the adoption of the proposed exemption to have an impact in practice on the use of the NCIB Exemption or substantial issuer bids.

We note that, in the U.S. market, issuers will often repurchase securities in connection with registered secondary offerings by selling shareholders, where the underwriters will resell a portion of the available securities in the registered offering and a portion will be acquired by the issuer. Staff of the Ontario Securities Commission recently granted exemptive relief from the requirements of NI 62-104 in connection with a prospectus-qualified secondary offering by certain shareholders of GFL Environmental Inc. We believe that it would be beneficial for market participants if the Proposed Amendments were to clarify the manner in which the selective repurchase exemption could be used in connection with registered or prospectus-qualified offerings.

We note, in particular, that the issuer's repurchase commitment will normally be determined in consultation with the selling securityholders and the underwriters prior to the execution of an underwriting commitment and the public announcement of the offering and repurchase. This feature could operate to preclude reliance on the selective repurchase exemption, as the fact of the secondary offering and concurrent issuer repurchase may constitute an undisclosed material fact or material change with respect to the issuer; if so, the issuer's repurchase would not meet the condition in clause (g) of the proposed selective repurchase exemption. As such, guidance would be valuable to confirm that Staff would not generally consider these facts in and of themselves as a material fact or material change that would preclude the issuer from relying on the selective repurchase exemption.[1] We would also suggest that, to accommodate market practices in connection with registered and prospectus-qualified offerings, the timing requirements in clause (d) and clause (h) of the selective repurchase exemption should not apply where the repurchase is agreed to and announced in connection with a registered or prospectus-qualified offering. For example, a bought deal transaction in Canada is often launched and announced (typically with a trading halt) prior to the close of markets.

2. Enhanced Equity Equivalent Derivative Disclosure

We recognize the potential benefits for issuers and other market participants to have greater transparency around the totality of a party's economic exposure to an issuer's securities. Timely disclosure of equity equivalent derivatives is a more effective regulatory approach than attempting to craft remedial measures after the fact where non-disclosure has resulted in perceived market abuse. We agree with limiting this enhanced disclosure requirement to specific situations where it is most meaningful (i.e., in the context of a bid or a proxy solicitation), as it is reasonable to extend the disclosure requirements that are applicable to insiders to persons that are seeking to become insiders (i.e., by virtue of a bid) or exercise a degree of influence over an issuer (i.e., by way of a proxy solicitation campaign) that may be comparable to the influence exercised by an insider.

Given that these Proposed Amendments will apply to all manner of proxy solicitations not made by management (and not in reliance on the "public broadcast" or "quiet solicitation" exemptions), it may apply in instances where, contrary to the stipulation in the Notice, there has not been a formal, public overture for control of the issuer. However, in such circumstances, the Proposed Amendments are justifiable by analogy to the disclosure requirements applicable to insiders. In this regard, Staff should consider what other instances may arise where a person seeks to become an insider or exert influence over an issuer in the manner of an insider and whether similar disclosure obligations should apply in those instances.

3. Amendments to the Early Warning System

We are supportive of the Proposed Amendments to the early warning system, but would encourage the CSA to provide market participants with guidance on:

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1 We believe that this guidance with respect to the fact of the issuer repurchase would also be appropriate in relation to the use of the selective repurchase exemption outside the context of a concurrent secondary offering and issuer repurchase.

(a) what activities (other than an acquisition of the affected securities) would result in the formation or cessation of a joint actor relationship, thus triggering an EWR filing requirement; and

(b) what irrevocable steps to effect a potential transaction, short of entering into a definitive agreement, would constitute a change in plans or future intentions that would trigger an updated EWR filing.

The Proposed Amendments introduce uncertainty and suggest that, in some cases, Staff is expecting disclosure to the public of a potential transaction that may be under consideration by a bidder or potential co-bidders, which we believe is inconsistent with current disclosure requirements and market practice.

We appreciate that the current regime treats the acquisition of affected securities as a bright line rule for determining when an EWR must be filed. By introducing the concept of a deemed acquisition of the affected securities, that bright line will necessarily be blurred. In our experience, EWR filers undertake careful analyses to determine when a change in a material fact in its most recent EWR has crystallized such that disclosure by way of an updated EWR is required. Undertaking a similar exercise to ascertain when a deemed acquisition has crystallized will be an even more complex analysis, and we believe that providing more detailed guidance would better support a consistent standard of compliance from all EWR filers. A clear understanding of the requirement is critical to allowing the rule to operate in an effective manner and create a level playing field for compliance. For example, two or more persons, who together hold more of than 10% of an issuer's shares, may collaborate on an offer to acquire the issuer. Such persons will need to determine, first, if any action short of entering into a definitive agreement to collectively acquire the issuer would amount to a deemed acquisition of 10% or more of the issuer's shares, thus requiring them to file an EWR and, second, whether that EWR will need to disclose their intention to acquire the issuer and on what terms. The overwhelming practice in this instance would be for the acquiring group to file an EWR upon the announcement of a definitive agreement to acquire the issuer; however, the Proposed Amendments suggest that disclosure would be triggered earlier.

While we generally agree that the public announcement of a material transaction involving an EWR filer should be accompanied by the appropriate EWR disclosure, absent clear guidance or the inculcation of a bright line rule, acquirors may be dissuaded from negotiating, participating in, or involving other persons as potential co-bidders in control transactions. Even the perception that changing one's intentions or forming a joint actor relationship with another party may require immediate disclosure could have a chilling effect on negotiations or the consideration of co-bidding arrangements. In the context of control transactions, this could mean that deals that offer superior value to shareholders either never materialize or are derailed by premature disclosure of the particulars.

We understand that the proposed guidance in sections 3.6 and 3.7 of National Policy 62-203 regarding the inclusion of convertible securities even if such securities are not convertible within 60 days in the numerator for early warning calculations is consistent with the securities regulatory authorities' existing application of Part 5 of NI 62-104. However, the proposed guidance does not take into account filers using the alternative monthly reporting system because "securityholding percentage", for purposes of NI 62-103, is defined with reference to sections 1.8 and 1.9 of NI 62-104, but not section 5.2 of NI 62-104. It is not clear to us whether this is an intentional policy choice to allow AMR filers to disregard securities not convertible within 60 days in determining their securityholding percentages at month end, or whether this is an unintended asymmetry between the EWR and AMR regimes.

As a further housekeeping matter associated with the Proposed Amendments, Staff could consider clarifying that the exceptions for securities subject to certain specified securities lending arrangements in section 5.7 of NI 62-104 in respect of the early warning reporting regime are equally applicable to AMRs filed under Part 4 of NI 62-103.

4. Amendments to Exemptions and Other Changes – Removing the 5% Market Purchase Exemption

We are not convinced that the 5% Market Purchase Exemption should be removed because it may serve as a valid self-help mechanism for bidders confronting improper defensive tactics or competing bids, enabling them to reduce the overall number of securities that other securityholders must tender to satisfy the bidder's minimum tender requirement. The jurisprudence linking the 5% Market Purchase Exemption to the policy objective of promoting liquidity during the pendency of a bid pre-dates the amendments to the take-over bid regime adopted in 2016, and the rationale offered by the CSA for its deletion ignores that this exemption was studied and ultimately determined to be retained as part of the 2016 bid amendments. Unlike the other Proposed Amendments, which are intended to enhance disclosure obligations and codify existing practices for which the securities regulatory authorities regularly grant exemptive relief, this Proposed Amendment stands as the lone proposed alteration to the balance of competing bidder objectives and investor protections that was struck in 2016.

The rationale offered for deleting the 5% Market Purchase Exemption in the Notice appears to be focused entirely on potential abuses, such as buying shares in order to thwart a competing bid, but the CSA has not provided any examples of such abuse and in fact, notes that the exemption appears to be infrequently used. In light of the prior regulatory consideration of the 5% Market Purchase Exemption, we think the CSA should provide more compelling evidence in support of eliminating this exemption.

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We appreciate the opportunity to comment on the Proposed Amendments and would be happy to discuss any of our comments set out above with you by phone or by email.

Yours truly,

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John Emanoilidis
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