From buybacks to enhanced disclosure: Canadian Securities Administrators signal a shift in regulation

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Sweeping changes have been proposed to Canadian securities law that would allow selective buybacks, enhance disclosure requirements, update the early warning system, and amend exemptions from takeover bid and issuer bid regimes (collectively, the Proposed Amendments). This development marks a shift by the Canadian Securities Administrators (CSA) towards providing issuers with greater flexibility, improving transparency, reducing regulatory burden, and enhancing the integrity of the issuer bid, takeover bid, and early warning reporting regimes.

Key takeaways

- The CSA propose to introduce a selective repurchase exemption allowing issuers to repurchase up to 5 per cent of their own securities over a 12-month period, provided that certain conditions are met.
- Enhanced disclosure of equity equivalent derivatives in takeover bids and proxy solicitations is proposed, with new requirements for both bidders and soliciting securityholders.
- The CSA plan to update the early warning reporting regime with guidance focused on acquirors' disclosure of future intentions, and clarification as to reporting triggers and deemed joint actorship.
- Several amendments to exemptions from takeover bid and issuer bid regimes are introduced, such as the expansion of the non-reporting issuer exemptions. This amendment codifies that certain securityholders, in similar positions to employees, be excluded from the calculation of the existing exemption, where non-reporting issuers are exempt from the takeover bid and issuer bid regimes if they have 50 or fewer securityholders, excluding employees.

New selective repurchase exemption

The CSA have proposed an exemption from the issuer bid rules that permits issuers to repurchase up to 5 per cent of a class's outstanding securities within a 12-month period, subject to certain conditions.

The current issuer bid regime does not allow issuers to repurchase shares through bilateral private agreements. Instead, issuers can only repurchase securities through a formal issuer bid made to all securityholders, or through one of the limited exemptions, such as the normal course issuer bid exemption conducted through a stock exchange.

Stakeholders have expressed concern that this regime is overly restrictive, noting that the inability to selectively repurchase securities may prompt market disposition by blockholders, which can artificially depress the market price of securities to the detriment of securityholders. Stakeholders have also noted that these limitations may deter investment, given that blockholders have fewer liquidity options in Canada compared to other jurisdictions, and in particular the United States.

As a result, the proposed exemption could significantly strengthen the Canadian issuer bid regime by providing issuers with the flexibility to undertake selective repurchases where it is in their best interest, and to improve the competitiveness of Canadian capital markets by reducing restrictions.

The following conditions must be met to utilize the exemption:

- **Purchaser and transaction limits:** Issuers are limited to repurchasing securities from a maximum of 5 persons, in a maximum of 5 transactions, during a 12-month period.
- **Discount requirement:** The consideration paid for the securities acquired, including brokerage fees or commissions, is less than the closing price of the class of securities on its principal market at the date of the bid. This condition should discourage shareholder activists from relying upon the proposed exemption to effect “greenmail” schemes.
- **Liquid market requirements:** There is a liquid market in the class of securities at the date of the bid. The issuer’s board of directors is also required to determine that, upon completion of the bid, the market for the class of securities subject to the bid would not reasonably be expected to be materially less liquid than it was prior to the bid, and that the bid would not reasonably be expected to have a significant negative effect on the market price or value of the class.
- **Disclosure requirement:** The issuer issues and files a news release that discloses the transaction and the number or principal amount of securities acquired during the preceding 12-month period. This disclosure must be made after the bid and before trading opens on the principal market for that class of securities.

This exemption would not reduce the number of securities an issuer could acquire through the normal course issuer bid exemption. The CSA plan to engage with the designated exchanges on potential amendments to their rules related to normal course issuer bids.

Enhanced disclosure of equity equivalent derivatives

The CSA have also proposed enhanced disclosure requirements that aim to improve the quality of disclosure provided for equity equivalent derivatives that alter an investor’s economic exposure to an issuer, particularly in the context of takeover bids and proxy solicitations requiring an information circular. The proposal is also intended to strengthen confidence in capital markets by promoting balanced and transparent

disclosure. The amendments include specific requirements for both bidders and soliciting securityholders.

For bidders, the requirements include:

- **Takeover bid circular disclosures:** A takeover bid circular must disclose any interests of the offeror or any person acting jointly or in concert with the offeror (joint actors) in related financial instruments involving the offeree issuer's voting or equity securities, or in any agreement, arrangement, or understanding that alters the economic exposure of the offeror or its joint actors, with a six-month lookback period.
- **News release disclosures:** During the bid, an offeror must issue and file a news release before the opening of trading on the next business day if it acquires, disposes of, or changes its interests in related financial instruments, or enters, amends, or terminates related arrangements.
- **Counterparty relationship disclosures:** An offeror is required to disclose any relationship it, or its joint actors, has with a counterparty, or any of its affiliates, that, to a reasonable person, could be perceived as affecting the counterparty's decision to acquire, dispose of, or vote on the securities of the offeree issuer, or indicate that no such relationship exists.

For soliciting securityholders, the requirements include:

- **Deemed control over a security:** During a proxy solicitation, an acquiror or its joint actor that is a counterparty to an equity equivalent derivative is deemed to have acquired and to have control over the security, which triggers early warning reporting.
- **Beneficial ownership disclosures:** An information circular must disclose beneficial ownership of, or control over, voting securities of the company, interests in related financial instruments, and arrangements altering the person's economic exposure. A person relying on the public broadcast, speech, or publication exemption to solicit proxies is required to disclose their beneficial ownership of, or control over, the company's voting securities.

Early warning reporting amendments

The Proposed Amendments include updated guidance relating to the disclosure of plans or future intentions of an acquiror or its joint actor. The guidance clarifies that an acquiror should reassess the accuracy of its most recent early warning report (EWR) disclosure regarding its plans or future intentions every time that the requirement to file is triggered, and update the disclosure as soon as there is a change in its plans or future intentions, or if it has taken irrevocable or significant steps in connection with a potential transaction or event.

There are also several key amendments to the early warning system to be aware of:

- **Securities of a previously non-reporting issuer:** The CSA have proposed to amend the EWR rules to require securityholders to file an EWR where they have beneficial ownership of, or control or direction over, 10 per cent or more of the outstanding voting or equity securities both before and after an issuer becomes a

reporting issuer.

If adopted, this Proposed Amendment would mark a significant change to market practice, given that securityholders currently do not typically file EWRs in respect of unchanged holdings when the issuer becomes a reporting issuer, such as on an initial public offering, on the basis that they have not acquired any additional securities. The CSA have indicated that it does not believe that the initial disclosure of a securityholder's position in filing statements, prospectuses, or information circulars is an adequate substitute for the disclosure required under the early warning requirements.

In addition, the CSA have noted that, without an initial EWR, there is no obligation to update the market with changes in material facts regarding their investment intentions, which could lead to securityholders avoiding disclosures.

- **Securities of joint actors:** Under the Proposed Amendments, joint actors would be deemed to have acquired the issuer's securities that are beneficially owned or controlled by other joint actors when they began acting jointly. The CSA clarified that this itself does not constitute a takeover bid in the absence of a subsequent acquisition by one or more of the joint actors. Instead, the deemed acquisition by joint actors would apply to the calculation of whether EWR obligations have been triggered.

  The rationale for the Proposed Amendment is that joint actors collectively holding 10 per cent or more of outstanding voting or equity securities in a class can influence control. When the joint actors cease acting jointly, each person would be deemed to have disposed of those securities, again potentially triggering an EWR obligation.
- **Trigger for subsequent filings:** The defined term "securityholding percentage" is proposed to be introduced to clarify that the obligation to file a subsequent EWR is triggered where there is a change of 2 per cent or more in the acquiror's post-event percentage ownership compared to the percentage ownership reported in its most recent EWR. There is also a clarifying amendment to confirm that eligible institutional investors relying on the alternative monthly reporting (AMR) system are required to file an AMR each time they cross a fixed 2.5 per cent threshold above 10 per cent.
- **Entry or re-entry into the AMR system:** An eligible institutional investor not filing under the AMR system is able to enter or re-enter the AMR system by promptly issuing and filing a news release stating that it is eligible and intends to file under the AMR system, and by subsequently filing an alternative monthly report.

Amending exemptions and codifying common discretionary exemptions

The Proposed Amendments also amend and codify a number of exemptions from the takeover bid and issuer bid regimes, such as:

- **Removing the 5 per cent market purchase exemption:** This exemption currently exists within the takeover bid regime, allowing bidders to purchase up to 5 per cent of the securities in the market subject to the bid during its pendency.

However, it has been criticized for having minimal value and the potential to be misused by bidders to prevent competing bids. In addition, the exemption is rarely used, and the CSA have, therefore, proposed removing it.

- **Expanding the non-reporting issuer exemptions:** Existing exemptions from the takeover bid and issuer bid requirements apply to non-reporting issuers where they have 50 or fewer securityholders, excluding employees. In the past, regulators have granted relief to issuers despite not satisfying the 50-securityholder limit, where the issuer exceeds the limit by less than 5 securityholders after permitting certain categories of holders to be excluded from the calculation. The categories excluded from the calculation are holders considered to be in a similar position to an employee, such as officers, directors, contractors, consultants, and spouses of qualifying persons. The Proposed Amendments codify these additional categories.
- **Codifying the exemptive relief allowing Dutch auction issuer bids:** The Proposed Amendments codify the exemptive relief previously granted allowing issuers to extend Dutch auction issuer bids without taking up all deposited securities first. As a result, securityholders who have tendered to the bid must wait until the expiry of the extension period before their securities are taken up. However, this exemption does not apply where the bid is not undersubscribed or where the market price of the securities exceeds the highest price offered.
- **Allowing proportionate tenders:** Although some modified Dutch auction issuer bids have included proportionate tender options, it is currently not permissible without exemptive relief. The Proposed Amendments codify the exemptive relief facilitating issuer bids with the option for securityholders to maintain their proportionate interest in an issuer after a bid.
- **Expanding acquisitions of convertible securities during issuer bids:** The exemption is expanded to allow issuers executing an issuer bid to repurchase, redeem, or acquire convertible securities subject to the bid.

Next steps

The Proposed Amendments represent a significant update to the issuer bid, takeover bid, and early warning reporting regimes. The comment period for the Proposed Amendments is open until Aug. 12, 2026. For further information, please see 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).

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