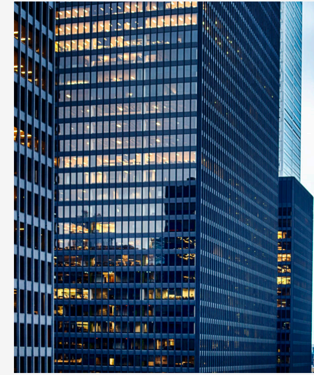
OSLER

CSA proposes to reshape share buybacks and shareholder reporting

JUNE 3, 2026 12 MIN READ



Related Expertise

- Capital Markets
- Corporate Governance
- Mergers and Acquisitions
- Securities Regulatory

Authors: James R. Brown, Alex Gorka, Emmanuel Pressman, Amelia Miao, Jason Comerford, Rosalind Hunter

Key Takeaways

- The Canadian Securities Administrators are proposing issuer bid and take-over bid changes aimed at increasing flexibility and transparency.
- Proposals update and clarify early warning reporting obligations for significant shareholders, including in relation to IPOs and joint actor relationships.
- Comments on the proposed changes are due by August 12, 2026.

Having last implemented revisions to the Canadian take-over bid and issuer bid regime more than a decade ago, on May 14, 2026, the Canadian Securities Administrators (CSA) proposed changes [PDF] to securities law requirements governing issuer bids, take-over bids and early warning reporting obligations. The codified amendments and policy guidance are intended to "provide issuers with greater flexibility to repurchase their own securities, enhance transparency of ownership of derivative interests in specified circumstances, and reduce regulatory burden and enhance the integrity of the issuer bid, take-over bid, and early warning reporting regimes".

The proposed amendments would, among other things

- facilitate broader share buyback exemptions, including by introducing a new targeted buyback (or selective repurchase) exemption, codifying prior exemptions granted for "Dutch auction" issuer bids and expanding exemptions for non-reporting issuers
- require enhanced disclosure of equity equivalent derivatives in the context of take-over bids and proxy contests
- revise early warning reporting (EWR) and alternative monthly reporting (AMR) regimes, including by providing guidance on when to update disclosure about plans or future intentions in an EWR; clarifying timing for filing of reports, including requiring an initial EWR by significant shareholders following an IPO; and creating a filing requirement upon the formation of a joint actor relationship

- remove the 5% market purchase exemption during take-over bids

In this Update, we discuss the potential effects and considerations of these changes. While evolutionary rather than revolutionary, these changes will provide greater flexibility to issuers and require significant securityholders to consider their disclosure obligations under Canadian securities laws carefully.

Issuer bid restrictions and the proposed selective repurchase issuer bid exemption

The issuer bid framework

Under the issuer bid regime, Canada regulates acquisitions by issuers of their own securities more strictly than other jurisdictions, such as the United States. Under National Instrument 62-104 – *Take-Over Bids and Issuer Bids* (NI 62-104), unless one of a limited number of exemptions is available, an issuer seeking to repurchase its own securities must comply with formal issuer bid requirements (commonly referred to as a substantial issuer bid and akin to a self-tender offer in the United States).

The commonly used "normal course issuer bid" (NCIB) exemption permits either market purchases offshore of up to 5% of outstanding shares or up to the greater of 5% of an issuer's outstanding shares or 10% of the issuer's public float if purchasing through a Canadian designated exchange such as the Toronto Stock Exchange (TSX) if made in compliance with the exchange's NCIB requirements. However, the designated exchange NCIB exemption is not available for purchases from insiders. In addition, in contrast to the Canadian take-over bid regime (akin to tender offers in the United States), there is no equivalent "private agreement exemption" for issuer bids that would facilitate targeted or selective repurchases. The policy rationale for not having such an exemption is ensuring equality of treatment of all shareholders, particularly given the acute informational advantage of an issuer and its insider shareholders compared to non-insider shareholders.

The selective repurchase exemption

Reflecting market feedback and a high volume of discretionary exemptive relief requests, the CSA has now proposed a specified issuer bid exemption permitting issuers to repurchase up to 5% of the securities of a class within a 12-month period from not more than five persons in Canada in not more than five transactions. The 5% limit is incremental to reliance on the NCIB exemption and the employee, officer, director and consultant exemption in NI 62-104.

The proposed exemption would require

1. the value of the consideration paid, including any brokerage fees or commissions, to be less than the closing price on the principal market at the date of the bid
2. a "liquid market" in the class of securities to exist at the date of the bid
3. the board of directors of the issuer to determine that, following the completion of the bid, the market for the class of securities would not reasonably be expected to be materially less liquid than the market that existed at the date of 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 of securities
4. the issuer to issue and file a news release after making the bid and before trading opens on the principal market

These conditions generally mirror those contained in prior exemptive relief decisions in respect of selective repurchases and are intended to mitigate risks of preferential treatment

to significant securityholders.

The proposed exemption is welcome. Codifying existing practices so that exemptive relief is not required will expedite transactions and provide greater certainty to issuers. We expect the 5% limit on repurchases under this exemption will be sufficient in most cases, although a higher limit may be warranted in some cases — for example, where the repurchase is concurrent with a public secondary offering.

Other policy considerations

The request for comments does not address offshore repurchases or the factors that generally necessitate CSA staff consultation in respect of buybacks from securityholders outside of Canada. Technically, the Canadian issuer bid framework only applies to purchases from Canadian holders. However, to varying degrees, Canadian securities regulators apply a “public interest” lens to offshore repurchases, weighing similar policy factors. Obtaining “soft comfort” for offshore selective repurchases, therefore, is reasonably common. Codifying the relevant factors in guidance would be a welcome addition to reduce the need for these consultations and deal uncertainty.

The proposals do not address other transactions involving potential repurchases of shares by issuers that have become popular, especially for cross-border issuers, including convertible securities offerings paired with derivatives that may include a related share repurchase by the issuer, such as capped call options or prepaid forwards. While common in the United States, issuer bid considerations have impeded the use of these structures by Canadian reporting issuers given the need to pre-clear the arrangements with regulators and their limitation to date to offshore repurchases. Clear guidance on when they can be completed would be welcome.

Early warning and alternative monthly reporting updates

Disclosure of equity equivalent derivatives

In 2013, the CSA proposed that investors include “equity equivalent derivatives” — equity derivative positions substantially equivalent in economic terms to conventional equity holdings, including total return swaps — in calculating ownership levels for EWRs. After concerns were raised, the CSA decided against mandated disclosure, although guidance was provided under National Policy 62-203 – *Take-over Bids and Issuer Bids* (NP 62-203) outlining circumstances where derivatives may need to be included. The CSA now proposes to revisit those positions following the Alberta Securities Commission’s decision in *Re Bison Acquisition Corp.* [PDF].

In *Bison*, the ASC panel considered a bidder’s use and disclosure of cash-settled total return swaps in an unsolicited take-over bid. In its 2021 decision, the panel determined that the bidder had complied with EWR requirements in not disclosing the swaps but found in the circumstances that the bidder’s use and disclosure was “clearly abusive” of the capital markets target securityholders.

The CSA has concluded that disclosure by bidders in a take-over bid and by soliciting securityholders in proxy contests requiring an information circular is important for transparency and informed decision-making. The proposed amendments would mandate disclosure of a bidder’s or soliciting securityholder’s aggregate economic position (i.e., beneficial ownership combined with economic interests in related financial instruments and any other agreements, arrangements or understandings altering economic exposure) in take-over bids and proxy solicitations. This is narrower than requiring reporting of equity equivalent derivatives in EWRs and is intended to balance fairness of disclosure against some

of the previously raised concerns.

The proposed requirement does not change the current EWR requirements insofar as economic equivalents are generally not currently considered for the purpose of determining whether the EWR reporting threshold has been triggered. Disclosure would be required in take-over bid circulars and applicable information circulars. Changes in economic exposure during the bid would require an updating press release. Soliciting securityholders would be subject to EWR updating requirements for changes in economic exposure.

Statements of intention in early warning reports

2016 amendments to the early warning system required more detailed information regarding the transaction purpose and the plans or future intentions of the acquiror or joint actors. The CSA has found this disclosure often consists of broad, boilerplate language which is relied on to avoid filing updates when intentions change or following specific actions. Market practice has been for acquirors to file updated EWRs only upon execution of a definitive agreement.

In response, the CSA is proposing new guidance in NP 62-203 to clarify expectations, including that

- acquirors should reassess the accuracy of the disclosure in their most recent EWR in respect of the plans or future intentions of the acquiror and any joint actor every time the requirement to file an EWR is triggered
- although the CSA generally considers that a change in plans or future intentions will occur, at the latest, upon the execution of a definitive agreement to enter into a transaction, the commencement of a take-over bid or the public announcement of a proxy solicitation, as applicable, an acquiror should update the disclosure in its most recent EWR 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, even if the acquiror's most recent EWR contains general language reserving the right to take any of the actions enumerated in Item 5 of the EWR
- 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 in the plans or future intentions disclosed in the acquiror's most recent EWR

The guidance attempts to balance market practice against a desire for higher quality and more current disclosure. However, there remains a great deal of ambiguity in the drafting, particularly in connection with the application of the proposed guidance to a take-private transaction by an insider. No further information has been provided regarding when the acquiror or any joint actor will have taken "irrevocable steps" or what "significant steps" may warrant updated disclosure. We have concerns that premature disclosure compelled by this guidance prior to execution of a definitive agreement could have significant adverse implications for transactions and the market, particularly in take-private transactions involving insiders.

Joint actor status as a trigger for early warning disclosure

The proposed changes to the early warning regime also respond to the B.C. Securities Commission's decision in *Re NorthWest Copper Corp.*, where the panel determined that if parties are acting jointly or in concert, the early warning requirements are triggered *only* upon a *subsequent acquisition* by joint actors collectively holding 10% or more; the mere

formation of a joint actor relationship did not trigger the filing of an EWR absent an acquisition.

The CSA disagrees and is proposing amendments that would trigger early warning reporting upon formation of a joint actor relationship where the parties together hold more than 10% of a class. Each person acting jointly or in concert would be deemed to have acquired the securities beneficially owned or controlled or directed by the other joint actors when they began acting jointly or in concert with each other.

The CSA has confirmed that this will affect only early warning reporting and that the formation of a joint actor relationship would not, in the absence of a subsequent acquisition, constitute a take-over bid, even if joint actors collectively own or control 20% or more of a class.

This proposal can be expected to face potential resistance, since the formation of a joint actor relationship is a question of fact and, in the absence of a corresponding acquisition of securities that informs that analysis, there may be differing views as to whether a joint actor relationship exists with the attendant consequences of joint actor status.

Early warning reporting in connection with an IPO

Absent a structuring reason where existing shareholders of a private company acquire securities after the company has become a reporting issuer (such as dual class capital structure or other reorganizations), EWRs are often not filed by existing significant securityholders upon completion of an initial public offering (IPO). Without an acquisition of voting or equity securities following a company becoming a reporting issuer, the early warning reporting obligations are not engaged. The CSA's concern is that in the absence of an initial report, significant securityholders are able to avoid disclosing subsequent dispositions, as they are not subject to updating obligations.

Some CSA jurisdictions have been requiring a commitment from issuers that significant shareholders file an EWR upon IPO completion as a condition to clearing the prospectus.

The CSA proposes to deem securities beneficially owned or controlled or directed by a securityholder to be "acquired" at the time that an issuer becomes a reporting issuer for early warning reporting purposes. This will require an initial EWR to be filed at closing of the IPO by all significant shareholders. However, the CSA has confirmed that no EWR news release would be required for this deemed acquisition, nor would the trading moratorium period apply.

Other clarifications under early warning and alternative monthly reporting

Other proposed clarifications for EWR and AMR filings include

- subsequent EWR filings are based on a 2% or more change relative to the percentage ownership that the acquiror reported in its most recent report
- eligible institutional investors (EIIs) under the AMR regime must file a report upon crossing fixed 2.5% thresholds above 10% (e.g., 12.5%, 15%, 17.5%, etc.)
- EIIs exempt from the early warning requirements are not exempt from news release requirements during non-exempt take-over bids or issuer bids
- EIIs that are not filing reports under the AMR system may enter or re-enter the AMR system by filing a news release confirming eligibility and their intention to do so

- guidance on calculating thresholds and the effect of acquiring convertible securities that are not convertible within the 60-day beneficial ownership period

Other proposed amendments

The CSA has proposed other amendments, including

- removing the 5% market purchase exemption during take-over bids
- expanding take-over bid and issuer bid exemptions for non-reporting issuers
- codifying exemptive relief that had previously been granted to issuers to accommodate the mechanics of a modified “Dutch auction” issuer bid, which is a common bid structure that provides more pricing flexibility than a fixed price issuer bid through which shareholders of an issuer are offered the opportunity to tender shares to the issuer’s offer, either by (a) specifying a number of shares being tendered within a specified price range or (b) specifying a number of shares to be purchased at the lowest clearing purchase price determined by the company
  - The amendments will allow issuers to extend issuer bids conducted under a modified “Dutch auction” procedure without first taking up all securities deposited under the bid if certain conditions are satisfied.
  - The conditions are designed to facilitate extensions of the expiry period where the offer may otherwise be undersubscribed and where the market price of the securities is not greater than the highest price per security offered by the issuer.
- codifying prior exemptive relief granted to issuers to accommodate substantial issuer bids that introduce a “proportionate tender” option
  - This format provides securityholders with the option to maintain their proportionate interest following completion of the bid.
- allowing issuers to acquire convertible securities during an issuer bid

Request for comment

Comments on the proposed amendments are due by August 12, 2026. The CSA has enumerated a list of specific questions on which it is seeking feedback. We encourage market participants to submit comments and would be pleased to discuss the proposals with you.