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Delivered By Email to: https://www.securities-administrators.ca/consultations/

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

Dear Sirs and Mesdames:

RE: Letter from SIMA to CSA commenting on Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes

The Securities and Investment Management Association (**"SIMA")** appreciates the opportunity to comment on the Canadian Securities Administrators **("CSA") Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes ("Proposed Amendments").**

SIMA empowers Canada's investment industry and is now the leading voice for the securities and investment management industry. The industry oversees approximately $4.5 trillion in assets for over twenty million investors and participates in the Canadian capital markets. Our members – including investment fund managers, investment and mutual fund dealers, capital markets participants, and professional service providers – are committed to creating a resilient, innovative investment sector that fuels long-term economic growth and creates opportunities for all Canadians.

SIMA operates within a governance framework in which we gather input from our member working groups. The analyses and recommendations of these working groups are submitted to the SIMA board or board-level committees for direction and approval. This process ensures submissions that reflect the input and direction of a broad range of SIMA members.

Summary:

We appreciate the opportunity to comment on the Proposed Amendments and support the CSA's objective to provide issuers with greater flexibility to repurchase their own securities, enhance transparency regarding the ownership of synthetic derivative interests, and reduce the overall regulatory burden while maintaining the integrity of the market. That said, we have concerns regarding the unintended operational, structural, and competitive consequences that certain elements of the Proposed Amendments may impose on Canadian capital markets if enacted in their current form.

General Comments

In our view, the updated framework should be practical, proportionate, and sufficiently flexible to accommodate established market practices without creating unnecessary operational complexity or impairing the competitiveness of Canadian capital markets. The regulatory focus should be on the purpose and effect of a transaction rather than the particular derivative structure used, with disclosure and other safeguards calibrated to address potential misuse without unnecessarily restricting ordinary-course capital markets activity. Our comments focus on clarifying key aspects of the proposals, reducing unintended consequences, and ensuring new requirements appropriately balance investor protection, market transparency, and commercial efficiency.

Please see responses below to the consultation questions that are of interest to our Capital Markets members.

Responses to Questions

Selective Repurchase Exemption

Question 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.

We recommend increasing the proposed 12-month aggregate threshold from 5% to 10%. Issuers undertaking equity offerings, convertible debt issuances, and other capital markets transactions often use over-the-counter ("OTC") equity derivatives with one or more financial counterparties for legitimate risk-management purposes. A 5% threshold may be too restrictive to accommodate the size and structure of these transactions. Increasing the threshold to 10% would provide issuers with greater flexibility while maintaining appropriate safeguards against abusive or coercive repurchases. A 10% threshold would also better align the Canadian framework with international market practices, particularly in the U.S., supporting a level competitive playing field for Canadian issuers while preserving the integrity of the proposed framework.

Additionally, the CSA should clarify within these conditions whether the Selective Repurchase Exemption ("Exemption") will permit purchases made from insiders or control persons. Given that normal course issuer bid ("NCIB") rules generally restrict purchases from insiders, additional guidance would be helpful to confirm whether the Exemption is intended to permit such transactions and, if so, what additional safeguards or disclosure requirements would apply.

Question 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.

We recommend increasing the proposed limit from five sellers and five transactions to ten sellers and ten transactions in aggregate over a 12-month period.

Canadian issuers frequently use OTC derivatives for equity hedging transactions which are often syndicated involving multiple counterparties. A five-seller and five-transaction limit could create practical challenges for issuers seeking to manage equity exposure through legitimate and routine business transactions. Increasing the limits would provide additional flexibility while preserving the CSA's objective of preventing selective repurchases that could undermine shareholder protections.

Question 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?

We do not believe the news release requires any additional information. Disclosures should provide investors with sufficient information to understand transactions and limit unnecessary operational complexity. To promote consistency and ease of implementation, we recommend aligning the disclosure requirements, where practicable, with the existing normal course issuer bid reporting framework. We also support allowing issuers a prescribed period following the announcement, execution or exercise of the transaction to issue and file the required news release.

Question 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?

We support determining the value of the consideration by reference to the closing price following the announcement of the bid. The proposed approach is appropriate for the types of equity hedging transactions that the Exemption is intended to facilitate. Provided the consideration is determined by reference to the closing price following public announcement of the bid and is paid at the required discount, the framework appropriately balances transparency, interests of all securityholders, and practical implementation considerations.

Question 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 with this approach. The Exemption is intended to facilitate a distinct category of transactions, including legitimate capital management and equity hedging arrangements, that differ in purpose and execution from an NCIB. Accordingly, purchases made under the Exemption should not diminish an issuer's ability to conduct repurchases under an NCIB.

We would also encourage the CSA to consider whether the existing NCIB rules remain appropriately structured to achieve their intended objectives while providing issuers with sufficient flexibility to effectively manage capital.

Question 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?

We do not believe that the availability of the Exemption should be limited to issuers with operative NCIBs. Limiting the Exemption in this manner could unnecessarily restrict its availability and prevent issuers from using the Exemption in circumstances where it serves a legitimate corporate purpose, including managing equity risk associated with capital raising activities, contingent equity arrangements, or other equity-linked transactions. Requiring an issuer to establish or maintain an NCIB as a condition to accessing the Exemption may also result in issuers being disadvantaged relative to issuers in other jurisdictions, particularly the United States, where similar equity risk management transactions are more readily accommodated.

More generally, the framework should remain agnostic to the type of bona fide derivative transaction or hedging strategy employed by the issuer, provided the conditions of the exemption are satisfied. Consistent with this principle, call options entered into for bona fide convertible bond hedging should not constitute issuer bids. These options are widely used as risk management tools to reduce dilution and facilitate capital markets transactions. They do not necessarily involve transactions with shareholders or provide preferential treatment to selected shareholders.

<u>Equity Equivalent Derivatives</u>

Question 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?

In our view, economic exposure through a derivative, by itself, should not be treated as equivalent to ownership or control of securities, and the proposed definition and guidance risk blurring that distinction. Some equity derivatives, including cash-settled derivatives, create contractual rights against a counterparty but do not provide ownership, voting rights, or the ability to direct the voting or disposition of the underlying securities. While these instruments may provide economic exposure to an issuer's shares, they do not provide the legal rights that underpin beneficial ownership or control of securities. Treating economic exposure as equivalent to ownership or control risks extending reporting obligations to positions that do not carry a meaningful ability to influence or control the issuer.

Question 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?

We support targeted disclosure of equity equivalent derivatives that is limited to circumstances where derivative positions provide meaningful information about an acquiror's economic interest, voting influence, or potential to exercise control. Disclosure should not extend to investors who are merely building economic exposure through derivatives in the ordinary course and whose positions are not connected to a control related transaction or objective.

The CSA should also clarify that disclosure obligations are triggered only once a take-over bid has been commenced or is being actively contemplated, and not merely because an investor has established a derivative position. Financial intermediaries, swap providers and other counterparties should not automatically be treated as part of the bidder group or deemed to be acting jointly or in concert with the bidder where they do not have a direct economic or strategic interest in the transaction. Guidance should also address circumstances in which derivative positions are established for legitimate business purposes before a decision is made to commence a take-over bid.

Question 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 believe requiring such disclosures risk creating unnecessary market noise and may discourage legitimate transactions. Overly broad reporting obligations increase compliance costs, reduce liquidity, and impede capital formation. Disclosure should be limited to derivative positions that may carry actual voting influence or control over the issuer. We also see no compelling policy reason to eliminate the 5% market purchase exemption during a take-over bid which enables bidders to absorb market liquidity and manage risk.

Question 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 support targeted and proportionate disclosure that is directly relevant to the take-over bid and provides material information regarding the bidder’s economic interest, voting influence, or control-related objectives. However, ordinary-course business relationships, including financing, hedging, market-making, and derivative transactions that do not extend influence over the transaction should not be subject to disclosure.

We also question whether a 6-month look-back period is necessary in all circumstances. The proposed look-back period could impose significant administrative burden on bidders and counterparties without providing a corresponding regulatory benefit. The CSA should consider whether a shorter look-back period or materiality-based approach would better achieve its objective.

Conclusion

SIMA is pleased to have the opportunity to comment on the Proposed Amendments. Overall, we support the CSA's efforts to modernize the issuer bid regime and improve transparency relating to equity equivalent derivatives. We encourage the CSA to update the framework by incorporating targeted disclosure, reasonable quantitative limits, and clear regulatory guidance, while maintaining sufficient flexibility for legitimate capital markets and risk management transactions. The Proposed Amendments should provide investors with meaningful information and appropriate protections without imposing unnecessary operational constraints or discouraging capital markets activity in Canada. We believe these refinements would better achieve the CSA's policy objectives while preserving the efficiency, flexibility and global competitiveness of Canada's capital markets.

Please feel free to contact me by email at amitchell@sima-amvi.ca. I would be pleased to provide further information or answer questions you may have, and welcome further engagement with the CSA as it considers the Proposed Amendments and the development of any related guidance.

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Yours sincerely,

THE SECURITIES AND INVESTMENT MANAGEMENT ASSOCIATION

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