PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

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

The Prospectors & Developers Association of Canada (PDAC) is the leading voice of the mineral exploration and development industry, representing over 9,000 individual and corporate members in Canada and around the world. PDAC works to support a competitive, responsible, and sustainable mineral industry, which accounts for more than a third of all companies listed on domestic exchanges, and half of all equity ($) raised in Canada in 2024 and 2025.

PDAC supports the CSA's objectives in the Notice; greater flexibility for issuers to repurchase securities, enhanced transparency of derivative and economic interests in control transactions and reduced regulatory burden through codification of frequently granted exemptive relief. In this context, we outline several issues CSA should consider, and recommendations we think could make the proposed amendments suitable for issuers with smaller market capitalizations, trading liquidity, etc.

1. **Most TSXV-Listed Issuers are Excluded from the Selective Repurchase Exemption**

We support the new Selective Repurchase Exemption (SRE) in proposed section 4.6.1 of NI 62-104, which offers issuers a more efficient route to address possible block holder overhangs and provide an alternate source of liquidity for large positions. However, according to CSA data, the liquid market test in proposed section 1.12 (a free float of at least $75 million and 12-month aggregate trading value of at least $15 million) will make the SRE unavailable to more than 90% of TSXV-listed issuers.

Mineral exploration companies, which account for nearly 60% of TSXV issuers[1], often have concentrated share ownership structures. For these small, thinly traded issuers, the potential sale of a large block by a departing shareholder can place significant downward pressure on a company's market valuation. These are, therefore, precisely the issuers for which a workable SRE may be most valuable.

We caution against a design that makes the exemption available only to larger issuers as it could generate unintended market distortions. It would leave smaller, less liquid issuers without a

[1] According to June 2026 MIG Report, there are 896 mineral TSXV issuers, out of total of 1,503 issuers.

codified solution, even though the concerns the exemption is meant to address may be most acute for them. Meanwhile, it would give larger, already more liquid issuers an additional tool to manage concentrated shareholdings. This could further tilt the playing field in favour of larger issuers rather than provide a broadly accessible solution to the underlying problem.

We are not asking CSA to alter section 1.12 thresholds as proposed, rather, **we recommend** CSA develop a supplementary pathway within the SRE that is scaled proportionally to issuer size. A scaled exemption could include thresholds such as:

- <u>Trading value expressed as a ratio of free float, not a dollar floor.</u> The current test's $15 million trading-value condition equals 20% of the $75 million float requirement. We propose conditioning the supplementary pathway on 12-month trading value equal to at least 20% of the issuer's free float. This is the same Annual Traded Value Ratio (ATVR) threshold MSCI uses for developed-market index eligibility under its Global Investable Market Indexes Methodology, giving this ratio a size-neutral, institutionally recognized basis.

- <u>A modest absolute public float floor beneath the ratios.</u> To prevent the supplementary pathway from being satisfied by extreme micro-capitalization issuers, we would support conditioning access to that pathway on a modest absolute public float floor well below $75 million (for example, in the range of $5 million to $10 million), calculated using the same mechanics already set out in section 1.12(2) of NI 62-104.

A supplementary pathway calibrated to less liquid issuers could carry safeguards such as:

- Extension of the period over which the 5% repurchase cap applies beyond 12 months;

- Use of a short-window volume weighted average price (VWAP) rather than a single day's closing price as the reference price, since a single close is more easily distorted in an illiquid market;

- Where an issuer raises funds to finance repurchases under the SRE, the issuer must disclose that intended use of proceeds, and the repurchase price must be lower than the price at which the financing was completed;

- Exclusion of, or enhanced independent approval for, repurchases from insiders, control persons, or other related parties, consistent with the minority-protection principles underlying MI 61-101; and

- A minimum reporting-issuer history (e.g., 12–24 months) to screen out newly-listed issuers without penalizing established juniors on liquidity grounds alone.

2. Clarifying the Scope of Derivatives Disclosure

We support enhanced transparency of aggregate economic positions in take-over bids and non-management proxy solicitations. The proposed "equity equivalent derivative" definition and related disclosure in proposed Item 8.1 of Form 62-104F1 and Items 6.6–6.8 of Form 51-102F5 are a reasonable way to address that concern.

However, mining and exploration companies routinely use various financing arrangements such as royalty, streaming, offtake, convertible debentures, net smelter return royalties, back-in rights, and earn-in and option agreements that can alter a counterparty's economic exposure without approaching share ownership or carrying voting or control rights. Without clear guidance, market participants may take an overly cautious view of whether such arrangements fall within the proposed definition, adding to the diligence and disclosure burden on ordinary-course financings unrelated to control accumulation.

Therefore, **we recommend** that the CSA add clear, mining-sector-relevant guidance and examples confirming these disclosure requirements are not intended to capture resource-sector financing arrangements unless they provide equity-equivalent economic exposure or influence over voting or tendering decisions.

3. Preserving Ordinary-Course Investor Engagement

The proposed early warning report (EWR) timing guidance and joint-actor clarifications should not unintentionally discourage ordinary-course discussions among issuers and investors, or among investors themselves. Mining and mineral exploration issuers rely on ongoing engagement with strategic investors, specialist funds, and financing participants for capital formation and project development.

These discussions are an important part of a well-functioning capital market, allowing investors to communicate their views, better understand an issuer’s strategy and financing needs, and provide feedback that may inform the issuer’s future direction. General discussions about an issuer’s strategy, financing needs, or potential future plans should therefore not, on their own, be treated as evidence of a reportable plan or future intention under the EWR regime.

A similar distinction exists under the material change reporting regime, where disclosure is tied to a material change having occurred, including a decision to implement a change, rather than to preliminary discussions about potential future actions. Consistent with this principle, investor discussions should not be treated as reportable plans or future intentions unless they reflect a sufficiently concrete intention or decision to act.

While timely disclosure is appropriate where investors have concrete plans or act jointly to influence an issuer, the guidance should clarify that ordinary-course engagement, financing discussions, and participation in the same financing process should not, on their own, trigger premature disclosure obligations or joint-actor concerns. Such clarity would help preserve appropriate transparency without chilling routine investor dialogue and financing activity.

We appreciate the CSA's efforts to modernize these regimes and thank CSA for the opportunity to provide commentary on these proposed amendments. We invite follow-up engagement to provide additional context for the issues we outline in this letter. Please feel free to contact Jeff Killeen, Director of Policy and Programs (jkilleen@pdac.ca) to coordinate such engagement, at your convenience.

Sincerely,

Jeff Killeen

PDAC Senior Director, Policy & Programs

CC:

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