Annex B

Summary of Comments and CSA Responses

The CSA received 71 comment letters in response to the Proposed Amendments to the early warning system that were published for comment on March 13, 2013 (the "2013 CSA Notice"). This Summary of Comments and CSA Responses (the "Summary") is structured to reflect the fact that commenters provided general comments on the Proposed Amendments and/or responses to the specific questions in the 2013 CSA Notice. General comments on the Proposed Amendments are summarized in "Part A - General Comments". Comments in response to the specific questions in the 2013 CSA Notice are summarized in "Part B - Specific Questions". In some cases, the substance of the comments in "Part A - General Comments" and "Part B - Specific Questions" overlap with each other. In those instances, we have provided a cross-reference to the related group of comments.

Subject	Summarized Comments	CSA Responses
Part A - General Comments		
(1) General Comments on Proposed Amendments		
Support for the Proposed Amendments	Thirty-three commenters generally supported the Proposed Amendments to enhance market transparency.	We acknowledge these comments of general support for the Proposed Amendments. The CSA have revised certain elements of the proposals and, while the Amendments are not as extensive as the Proposed Amendments, we consider that the Amendments will enhance the quality and integrity of the early warning reporting regime in a manner that is appropriate for the Canadian public capital markets.

Subject	Summarized Comments	CSA Responses
Opposition to the Proposed Amendments	Seventeen commenters raised various concerns about potential unintended consequences of certain Proposed Amendments. Their concerns included the following: • material reduction of the capital available to smaller issuers; • negative impact on capital markets in general, passive investors and other market participants; • substantial change in reporting practices; • benefits from greater transparency would be outweighed by the costs associated with the Proposed Amendments.	We acknowledge these comments of opposition. Although we anticipated that the Proposed Amendments would result in increased compliance costs and other impacts, the comment process has raised significant concerns as to whether the benefits to be gained by increased transparency would indeed outweigh the potential costs. As a result, and also considering various concerns raised by commenters about potential unintended consequences of certain of the Proposed Amendments, the CSA have determined not to proceed with certain of the Proposed Amendments.
(2) Reduction of Early Warning Reporting Threshold from 10% to 5%		
Support for the reduced reporting threshold	Twenty commenters indicated their general support for a lower beneficial ownership reporting threshold of 5%. Three commenters noted, in particular, that their support for the 5% reporting threshold was based on a need for modernization of the regime and the ability of issuers to have more visibility into the shareholder base. One commenter expressed support for the 5% threshold only if the eligibility criteria to be an EII and use the AMR are amended as proposed.	We thank the commenters for their input. The purpose of the proposal to reduce the reporting threshold from 10% to 5% was to provide greater transparency about significant holdings of reporting issuers' securities under the early warning system. However, the lack of overall support for the proposal and the various concerns raised by a majority of

Subject	Summarized Comments	CSA Responses
	Two commenters supported the proposed 5% threshold specifically because it would appear to be consistent with the reporting thresholds prescribed by major foreign jurisdictions.	commenters about potential unintended consequences of the lower reporting threshold has led the CSA to re-consider this proposal. Some factors that we considered were the: • unique features of the Canadian market, including the large number of smaller issuers and the limited liquidity; • risk of reducing access to capital for smaller issuers; • potential of hindering an investor's ability to rapidly accumulate or reduce a large position; • possibility of signalling investment strategies to the market; and • potential benefits of the greater transparency being outweighed by the potential negative impacts of implementing the lower reporting threshold. In light of the CSA's consideration of these factors, we have concluded that it is not appropriate at this time to reduce the reporting threshold.

<table>
<tr><th>Subject</th><th>Summarized Comments</th><th>CSA Responses</th></tr>
<tr><td></td><td></td><td>We consider that the enhanced disclosure requirements provided in the Amendments, combined with the standards of the current early warning regime, will improve the quality and integrity of the regime in a manner that is suitable for the Canadian market.</td></tr>
<tr><td>Opposition to the reduced reporting threshold</td><td>Twenty four commenters were opposed to the proposed reduced reporting threshold of 5%. These commenters expressed various concerns, including:

• negative impact on cost and access to capital for smaller issuers;
• reduced market and trading liquidity;
• increased compliance costs;
• inhibition of investment in smaller companies because low levels of investment would trigger disclosure obligations;
• that the potential benefits of the reduced reporting threshold would be outweighed by the potential costs;
• questionable relevance of the disclosure regarding 5% holders for the market;
• potentially negative impact on the efficiency of the Canadian market.

Three commenters submitted that a 5% reporting threshold would force them to divulge proprietary investment information to the market, making it more difficult and costly to meet their investment objectives.</td><td>We acknowledge these comments of opposition.

As noted above, the CSA have concluded that it is not appropriate at this time to reduce the reporting threshold.</td></tr>
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Subject	Summarized Comments	CSA Responses
	Seven commenters were concerned that the proposal does not take into account the unique characteristics of the Canadian market. Two commenters submitted that the lower reporting threshold should not apply to annual redemption funds and preferred shares.	
Alternatives proposed	Twelve commenters suggested that the reduced reporting threshold should not apply to smaller issuers and rather apply based on a market capitalization threshold or depending on the listing of the issuer. Ten commenters suggested that the reduced reporting threshold should not apply to EIIs or passive investors since those investors have no intention of influencing control of a reporting issuer. Three commenters suggested that the CSA adopt a disclosure regime similar to the one available in the U.S. Five commenters believed that mutual funds should continue to be subject to a 10% threshold which is aligned with their 10% control restriction. Two commenters recommended that mutual funds be exempted from the early warning reporting and that all of their reporting be conducted in aggregate fashion through their managers under the AMR applying a 10% threshold.	We thank the commenters for their input. In light of the comments received from market participants, we explored various alternatives for creating a reduced early warning reporting threshold for only a sub-group of issuers or investors. The factors considered by the CSA included the following: • the complexity and difficulty of applying a lower reporting threshold only to certain issuers or to certain investors; and • the potential administrative and compliance burden associated with implementing different reporting thresholds within the early warning system. In light of the CSA's consideration of

Subject	Summarized Comments	CSA Responses
		these factors, we have concluded that the reporting threshold should remain at 10% for all issuers and investors. The purpose of the early warning regime is to advise the market that a particular investor, or a person acting jointly or in concert with such investor, holds a significant block of securities in a reporting issuer. Mutual funds that are reporting issuers are prevented by securities legislation from taking positions in excess of 10% of the outstanding voting or equity securities of an issuer, and so should not generally be subject to the early warning requirements. We are not proposing a reform to the AMR framework. We may consider more comprehensive changes to the AMR regime as part of a future review.
(3) Timing of filing of News Release and Early Warning Report		
Support for proposed clarification that filing be made promptly but not later than opening of trading on next business day	Sixteen commenters expressed their support for an explicit requirement that disclosure be made, not only promptly, before trading hours commence on the business day following the applicable acquisition.	We acknowledge these comments of support.

Subject	Summarized Comments	CSA Responses
Opposition to proposed clarification that filing be made promptly but not later than opening of trading on next business day	While noting the existence of the moratorium, two commenters mentioned that a specific requirement to issue the press release by the opening of business the following trading day is unnecessary and may not be practical since it also requires disclosure of joint actors' holdings. One commenter submitted that the early warning requirements to promptly issue and file a news release and to file on SEDAR an additional report containing substantially the same information are redundant and suggested easing the formal reporting requirements.	We consider that this is important to ensure that the market is promptly advised of accumulations of significant blocks of securities that may influence control of a reporting issuer and that the disclosure should be made in accordance with an objective timing standard. We acknowledge that the stricter timing requirement for issuing and filing a news release with comprehensive information may present challenges for filers in certain circumstances. As a result, we have revised the requirements for the news release so that an acquiror may issue and file a streamlined news release containing more limited information and which refers to the early warning report for further details.
Alternatives proposed	One commenter suggested that the disclosure in the news release be streamlined to require a statement that an early warning report has been filed. One commenter submitted that a longer filing period should be adopted to minimize the chilling effect on engaged investing.	As noted above, the Amendments allow an acquiror to issue and file a streamlined news release no later than the opening of trading on the next business day. We do not believe that the filing requirements of the early warning reporting regime unduly discourage engaged investing.

Subject	Summarized Comments	CSA Responses
(4) Disclosure of Decreases in Ownership of at least 2%		
Support for requirement to disclose 2% decreases in ownership	Two commenters specifically supported disclosure of decreases in ownership at the 2% level, while the other supporting commenter suggested disclosure at the 1% level. See also comments under Part B (1) of this Summary.	We thank the commenters for their input.
Opposition to requirement to disclose 2% decreases in ownership	One commenter disagreed with the proposed requirement to report a reduction of 2% ownership in any circumstances. One commenter disagreed with the proposed requirement to report a reduction of 2% ownership in respect of smaller issuers. One commenter believed that the requirement to disclose a 2% decrease in ownership should not apply to passive investors. While noting that a decrease in ownership may be relevant, one commenter submitted that the current 'material fact' test is a better standard to apply. See also comments under Part B (1) of this Summary.	We believe that, in all cases, significant decreases in ownership of securities in an issuer are as relevant to the market as significant increases in ownership and therefore should be disclosed. We think that a "bright line" disclosure requirement for 2% decreases in ownership is appropriate and will ensure there is timely disclosure to the market as to significant downward changes to an acquiror's ownership position. The existing requirement to provide an updated report if there is a change in a material fact contained in an earlier report will continue to apply.
Alternatives proposed	Seventeen commenters indicated that they support subsequent disclosure of both incremental increases and decreases of 1%. While supporting decrease reports at the 2% level, one commenter suggested that the CSA consider adopting	We acknowledge these comments. However, in light of the CSA's decision to maintain the reporting threshold at 10%, we consider it appropriate to require disclosure of increases and

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	fixed 2.5% thresholds similar to the AMR. See also comments under Part B (1) of this Summary.	decreases of 2% or more once the initial threshold has been reached.
(5) Disclosure when Ownership falls below the Reporting Threshold		
Support for requirement to disclose decreases in ownership to below reporting threshold	Seventeen commenters supported the requirement to issue and file a news release and file a report if an acquiror's ownership percentage falls below the early warning reporting threshold.	We agree that disclosure of share ownership when the ownership falls below the threshold is valuable information to the market.
Opposition to the requirement to disclose decreases in ownership to below reporting threshold	One commenter disagreed with the requirement to report when holdings decrease below early warning reporting threshold.	We acknowledge this comment of opposition.
(6) Enhanced disclosure		
Support for more detailed disclosure in the early warning report	One commenter who supported more detailed disclosure considered that it will provide useful information to the market. This commenter also considered that the related proposed officer certification requirement would facilitate such enhanced disclosure. One commenter expressed support for full and complete disclosure in early warning reports. The commenter further stated that such improved investor disclosure also serves to reduce the emphasis on short-term market perspectives in favour of actions to create value over a longer-term investment horizon.	We thank the commenters for their input. We consider that investors must be given sufficient information to properly assess the nature and circumstances of an acquiror's investment. We agree with the commenters who support more detailed disclosure of the intentions of the person acquiring securities and of the purpose of the acquisition as this will enhance the substance and quality of the early warning system.

Subject	Summarized Comments	CSA Responses
Opposition to more detailed disclosure in the early warning report	Seven commenters noted that the greater disclosure scope would likely result in early warning reports being prepared with the assistance of professional advisors. These commenters suggested that this will increase the costs of reporting and may discourage investment in small and mid-cap companies. Four commenters submitted that enhanced disclosure concerning an investor's purpose and intentions is burdensome for investors and with little or no utility to the market. Some of these commenters were also concerned that the prescriptive nature of the disclosure would result in investors being required to disclose their investment thesis to the market.	We thank the commenters for their input. However, the CSA are of the view that the enhanced disclosure is appropriate and necessary for the reasons mentioned above.
(7) Derivatives		
Support for the amended early warning reporting trigger to include "equity equivalent derivatives"	Nineteen commenters supported including "equity equivalent derivatives" in the early warning system threshold calculation. One of these commenters expressed that this issue is not isolated to Canada and that other countries have introduced regulatory reforms that require the inclusion of synthetic financial instruments that effectively replicate the economic consequences of share ownership. Two commenters believed it is justified to include such derivatives in the calculation of the threshold if their inclusion would inform the market effectively of the total financial interest that an investor has in an issuer. But the commenters indicated that the proposal is ambiguous and that its application should be clarified.	We thank the commenters for their input. The purpose of the proposal to include "equity equivalent derivatives" in the early warning reporting trigger was to ensure proper transparency of securities ownership in light of the increased use of derivatives by investors. However, the concerns raised by a number of commenters about the complexity and difficulty of applying this new trigger have led the CSA to re-consider this proposal. The factors considered by the CSA

Subject	Summarized Comments	CSA Responses
	See also comments under Part B (6) and (7) of this Summary.	included the following: • a number of market participants indicated that the use of derivatives in Canada is not generally to facilitate hidden ownership or to influence voting outcomes; • the inclusion of "equity equivalent derivatives" could unduly complicate reporting and compliance obligations; • the application of the proposal could allow the market to deduce investment strategies and this could be detrimental to investors with certain derivative positions. In light of the CSA's consideration of these factors, we have concluded that it is not appropriate at this time to include "equity equivalent derivatives" in the early warning reporting trigger. The CSA acknowledge that guidance clarifying the current application of early warning reporting requirements to certain derivative arrangements may be useful. Therefore, the Amendments now include such guidance.

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Opposition to the amended early warning reporting trigger to include "equity equivalent derivatives"	Three commenters indicated that there is a lack of clarity around the inclusion of derivatives in the early warning calculation. Two commenters believed that only in exceptional cases are derivatives used for the purpose of engaging in behaviour that the early warning system is intended to address (i.e. alerting the market to a possible change of control transaction). These commenters suggested that, given the complexity of modern derivative instruments, it would be appropriate for the CSA to engage in a dialogue with investors before imposing significant reporting requirements to fully understand such products. One commenter questioned whether reporting of equity equivalent derivatives in the AMR system is necessary. The commenter also suggested that the test for defining an "equity equivalent derivative" should be based on whether the party has the right to vote the referenced securities. One commenter noted that within the current regime there is considerable duplication in reporting requirements under the insider and early warning reporting requirements, and that the proposed amendments will increase the extent of duplication. See also comments under Part B (6) and (7) of this Summary.	We acknowledge these comments of opposition. As noted above, the CSA have concluded that it is not appropriate at this time to include "equity equivalent derivatives" in the early warning reporting trigger.

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Opposition to the broader scope of disclosure of derivatives in the early warning report	One commenter submitted that the proposed requirement to disclose the general nature and all material terms for all equity derivatives arrangements may impose a significant administrative burden. One commenter was concerned about the requirement to disclose transaction terms in derivative contracts (as this information may be of proprietary nature) and about the requirement to disclose any contracts or arrangements in relation to any security of the issuer (rather than in relation to the securities underlying the transaction subject to the reporting requirement).	We acknowledge these comments of opposition. The CSA have concluded that it is appropriate to enhance the disclosure requirements in the early warning report to encompass interests of an acquiror in related financial instruments as well as in any agreement, arrangement, commitments or understanding with respect to the securities of the issuer in order to ensure that the report provides complete disclosure about the acquiror's interest in the reporting issuer. However, we have clarified that the scope of the enhanced disclosure in an early warning report is in relation to the class of securities in respect of which the report is required to be filed and not in respect of any security of the issuer. The Amendments also include new instructions to the early warning report that clarify that the concept of "material terms" is not intended to capture the identity of the counterparty or proprietary or commercially sensitive information.
Alternatives proposed	Four commenters believed that the test for requiring disclosure of an equity equivalent derivative should be primarily based on whether a party has a beneficial ownership interest (i.e. the right to vote any shares or the	We thank the commenters for their input. The CSA have removed the concept of

Subject	Summarized Comments	CSA Responses
	obligation to acquire the underlying securities). One commenter submitted that an exemption from reporting should be required when parties can objectively demonstrate a non-control intent in entering into equity equivalent derivative transactions. One commenter suggested amendments to the definition of “equity equivalent derivative” by adding the following words to the end of the proposed definition: “where (i) the counterparty to the derivative has, directly or indirectly, hedged its position by acquiring voting securities of the issuer and (ii) the holder exerts or intends to exert influence on how the counterparty votes those securities”. One commenter submitted that the proposed amendments respecting "equity equivalent derivatives" should not apply to derivatives referencing securities of annual redemption funds.	“equity equivalent derivatives” in the Amendments. As noted above, the CSA are providing guidance clarifying the current application of early warning reporting requirements to certain derivative arrangements.
(8) Securities lending		
Support for broader scope of disclosure and proposed exemption for specified securities lending arrangements	Five commenters supported the broader scope of disclosure and proposed exemption for specified securities lending arrangements. See also comments under Part B (12) of this Summary.	We thank the commenters for their input.

Subject	Summarized Comments	CSA Responses
Opposition to broader scope of disclosure of securities lending arrangements in the early warning report	One commenter believed that the obligation to report securities lending arrangements in effect at the time of the reportable transaction may prove to be a constraint for investors. One commenter submitted that the proposed requirement to disclose the general nature and all material terms for all securities lending transactions may impose a significant administrative burden. One commenter submitted that requiring lenders to provide additional and onerous disclosure about the terms of the securities lending arrangements does not provide valuable information to the market. One commenter considered that the requirement to disclose the ‘material terms’ of any reportable securities lending arrangement is too broad and subjective. The commenter added that the requirement should be limited to information that is relevant to the control of the issuer. See also comments under Part B (12) of this Summary.	We acknowledge these comments of opposition. The CSA have concluded that it is appropriate to enhance the disclosure requirements in the early warning report to provide greater transparency about securities lending arrangements so that the report provides complete disclosure about the acquiror’s interest in the class of securities of the issuer for which the report was filed. However, in light of comments received, we have made changes in the Amendments to clarify that the concept of “material terms” is not intended to capture the identity of the counterparty or proprietary or commercially sensitive information.
Opposition to proposed exemption for specified securities lending arrangements	One commenter indicated that there is a lack of clarity around the securities lending arrangements that would be caught under the early warning system. See also comments under Part B (12) of this Summary.	We acknowledge this comment of opposition. However, the CSA have provided definitions for “specified securities lending arrangements” and for “securities lending arrangements” in the Amendments. We are of the view that these definitions provide the parameters

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		of which arrangements are captured by the early warning system.
Alternatives Proposed	Two commenters suggested that borrowing in the context of short selling should be exempted from the reporting obligations. Three commenters suggested that an exemption similar to the one available for lenders should be provided for borrowers. One commenter invited the CSA to consider recent studies on empty voting abuses. Two commenters believed that the rule should focus on the concept of beneficial ownership and in particular on who has voting rights over the borrowed securities. The commenters further stated that the proposal should be clarified to indicate that borrowings and loans should be offset against one another in any calculation of total holdings to avoid over-reporting. One commenter urged the CSA to consider which party (lender or borrower) is the most appropriate person to do the reporting. This commenter expressed that the reporting obligation should rest on the ultimate end-user or 'holder' of the securities. One commenter suggested that borrowers should be explicitly required to disclose if the securities they have borrowed may be recalled by the lender.	We thank the commenters for their input. We acknowledge the comments that persons borrowing securities in the ordinary course of short selling activities in Canada are doing so for commercial/investment purposes and not with a view of influencing voting or intending to vote the borrowed securities and, as such, these activities ought not to give rise to empty voting concerns. In light of the comments received, the CSA have included in the Amendments an additional reporting exemption for borrowers under securities lending arrangements, subject to certain conditions. The Amendments clarify that lenders and borrowers should consider securities lent (disposed) and borrowed (acquired) under securities lending arrangements in determining whether an early warning reporting obligation has been triggered. The parties to the securities lending arrangement may

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	One commenter submitted that it would be more effective to implement controls around borrowing securities before the record date simply for voting purposes and to require fulsome disclosure on borrowers' holdings. While noting that borrowing securities to hold and vote them is regarded as inappropriate, one commenter noted that there is no reason to subject them to EWR requirements. See also comments under Part B (11) and (12) of this Summary.	cross different early warning reporting thresholds: the lender will be subject to obligations to report decreases in ownership while the borrower will be subject to obligations to report increases in ownership, unless an exemption is available. The Amendments require the borrower to disclose in the early warning report the material terms of the securities lending arrangement, which could include the right by the lender to recall the securities.
(9) Changes to Alternative Monthly Reporting Regime		
Support for the change to the criteria for disqualification from alternative monthly reporting regime	Three commenters supported the proposal to make the AMR regime unavailable to persons who solicit proxies. Two commenters mentioned that it made sense that investors that exhibit 'active' behaviour should be required to adhere to the rules under early warning reporting rather than AMR. See also comments under Part B (8) of this Summary.	We thank the commenters for their input. The CSA are of the view that allowing an EII access to the AMR regime in circumstances where the EII solicits proxies from security holders on specific matters is not consistent with the policy intent of the AMR regime.
Opposition to the change to the criteria for disqualification from alternative monthly reporting regime	One commenter indicated that EIIs soliciting or intending to solicit proxies should not be disqualified from the AMR system. One commenter indicated that the proposal would increase the compliance burden for passive investors and	We acknowledge these comments of opposition. However, the CSA are of the view that the change to the disqualification criteria is appropriate for the reasons

Subject	Summarized Comments	CSA Responses
	require reporting that is not practicable. One commenter expressed concern that the change in disqualifying criteria may be problematic for investors who tend not to take advantage of the AMR regime when investing in smaller issuers. Given the nature of investment in small cap companies, the commenter noted that it is not unusual for the investor to engage with these companies on governance or other corporate issues. See also comments under Part B (8) of this Summary.	mentioned above.
Alternatives proposed	Nine commenters submitted that other types of investors (e.g. mutual funds that are reporting issuers, broker-dealers) should be included in the definition of EII and therefore able to follow the AMR regime. Two commenters believed that the proposed amendments should subject passive investors to reduced disclosure obligations and relax the formal requirements surrounding such obligations, as does the similar U.S. system. One commenter recommended that hedge funds and similar entities be excluded from the definition of EII as they are by and large activist shareholders intending to influence the company. Four commenters indicated that the term “solicit” should be defined or clarified to preserve shareholder engagement. One commenter suggested that the disqualifying criteria	We thank the commenters for their input. Upon further consideration and in light of comments received, the CSA have revised certain elements of the proposal to clarify the scope of the new disqualification criteria. As noted above, we are not proposing at this time a reform to the AMR framework. We may consider more comprehensive changes to the AMR regime as part of a future review. We emphasize that mutual funds that are reporting issuers are not included in the definition of EII. The manager of a mutual fund that is a reporting issuer may be an EII, but not the mutual fund itself. Mutual funds are prevented by

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	be the following: "directly solicits from securityholders of a reporting issuer in reliance on an information circular, its own proxies in opposition to management as to the election of directors of the reporting issuer or to a reorganization, amalgamation, merger, arrangement or similar corporate action involving the securities of the reporting issuer". One commenter submitted that the definition of EIIs should be expanded to include wholly-owned subsidiaries of EIIs. The commenter also suggested that the CSA clarify the qualification criteria under the AMR system and to specify that it is not available to hedge funds and other active funds. See also comments under Part B (8) of this Summary.	securities legislation from taking positions in excess of 10% of the outstanding voting or equity securities of an issuer, and so should not generally be subject to the early warning requirements.
(10) Other comments		
	Sixteen commenters noted that they support a future review of the AMR. Three commenters suggested that the moratorium period should be eliminated. Another commenter suggested that the moratorium should not apply in the case of passive investors. Two commenters believed that the CSA should harmonize the dual calculation methodologies under the early warning system and the insider reporting regime. Another commenter suggested that the CSA link early warning reports with SEDI reports.	We thank the commenters for their input. As noted above, we are not proposing at this time a reform to the AMR framework. We may consider more comprehensive changes to the AMR regime as part of a future review. We are of the view that the moratorium is appropriate because the market should be alerted of the acquisition and provided sufficient time to assess the significance of the information before

Subject	Summarized Comments	CSA Responses
	One commenter submitted that annual redemption funds should be exempted from the early warning reporting requirements. Four commenters noted that a transition period or transitional guidance is needed if the CSA decides to proceed with the changes.	the acquiror is permitted to make additional purchases. While there are similarities between the insider reporting regime and the early warning regime, the policy objectives of the regimes are distinct. The calculation methodologies reflect this distinction and therefore are not harmonized. Investment funds that are reporting issuers are prevented by securities legislation from taking positions in excess of 10% of the outstanding voting or equity securities of an issuer, and so should not generally be subject to the early warning requirements. Given the more limited extent of the Amendments, the CSA have determined that a transition period is not necessary.
Part B - Specific Questions		
(1) Do you agree with our proposal to maintain the requirement for further reporting at 2% or should we require further reporting at 1%? Please explain why or why not. (Disclosure of Decreases in Ownership of at least 2%)		
Yes	Nine commenters agreed with maintaining the requirement for further reporting at 2% in order to avoid further increasing the compliance burden or costs. Some of these commenters noted that this information would be largely irrelevant to the capital markets. While noting that there are strong arguments in favour of	We agree with the commenters that the requirement for further reporting at 2% is appropriate.

Subject	Summarized Comments	CSA Responses
	establishing a 1% further reporting threshold, three commenters were in favour of maintaining the 2% in order to avoid increasing the compliance burden even more. One commenter agreed with maintaining the requirement for further reporting at 2% because there does not appear to be empirical evidence supporting the lowering of the threshold.	
No	One commenter mentioned that once the reporting threshold of 5% was reached subsequent disclosure would be required for increases and decreases of 1% or more (i.e. one-fifth of the threshold). See also comments under Part A (4) of this Summary.	We acknowledge this comment. As noted above, the CSA have concluded that it is not appropriate at this time to reduce the reporting threshold.
(2) A person cannot acquire further securities for a period beginning at the date of acquisition until one business day after the filing of the report. This trading moratorium is not applicable to acquisitions that result in the person acquiring beneficial ownership of, or control or direction over, 20% or more of the voting or equity securities on the basis that the take-over bid provisions are applicable at the 20% level. **The proposed decrease to the early warning reporting threshold would result in the moratorium applying at the 5% ownership threshold. We believe that the purpose of the moratorium is still valid at the 5% level because the market should be alerted of the acquisition before the acquiror is permitted to make additional purchases.** **(a) Do you agree with our proposal to apply the moratorium provisions at the 5% level or do you believe that the moratorium should not be applicable between the 5% and 10% ownership levels? Please explain your views.** **(b) The moratorium provisions apply to acquisitions of "equity equivalent derivatives". Do you agree with this approach? Please explain why or why not.** **(c) Do you think that a moratorium is effective? Is the exception at the 20% threshold justified? Please explain why or why not.**		

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(a)	Nine commenters supported that the moratorium provisions should apply at the 5% level. One commenter suggested that the final rule should take into account the intent of the investor. Another commenter was concerned about compliance costs for passive investors. While noting that an initial reporting threshold at the 5% level may be controversial for some investors, one commenter suggested that the impact of that may be softened by suspending the moratorium up to 10%. One commenter submitted that regardless of the threshold determination, rather than imposing a moratorium on an early warning system filer, greater fairness and efficiency in the capital markets can be achieved from requiring the disclosure of the information immediately following the close of the market. One commenter submitted that an EII does not have any intention to affect the control of the issuer and should not be subject to the one business day moratorium on trading securities until the 10% threshold has been reached. Three commenters disagreed with reducing the moratorium trigger threshold to 5%. One of these commenters considered that the market would not benefit from reducing the moratorium trigger to 5% in the case of passive investors.	We thank the commenters for their input. However, in light of the CSA's decision to maintain the reporting threshold at 10%, we consider it appropriate that the moratorium provision remain at the same level as the disclosure threshold. The CSA are not proceeding with its proposal to apply the moratorium provisions at the 5% level.
(b)	Nine commenters agreed with applying moratorium provisions to "equity equivalent derivatives".	We thank the commenters for their input.

Subject	Summarized Comments	CSA Responses
	One commenter submitted that to the extent “equity equivalent derivatives” are narrowly defined, the moratorium should apply to those as well. One commenter submitted that the moratorium provisions should not apply as the proposed definition is overly broad and would capture a number of transactions irrelevant to the objective of informing the capital markets of intended further activity. Only with respect to circumstances where the derivative actually entitles the holder to the voting rights attaching to the securities, should such securities be included in the early warning calculation. One commenter believed that the moratorium provisions should not apply to acquisitions of “equity equivalent derivatives”. Two commenters considered that the moratorium should not apply to investors with only a synthetic position in a security.	However, as noted above, the CSA has decided not to include “equity equivalent derivatives” in the early warning reporting trigger, and therefore this issue is moot.
(c)	Five commenters indicated that the moratorium is effective to make sure that the market has time to react. One commenter submitted that it would be sufficient if the moratorium extended only for a period of 24 hours following the filing of the report. One commenter considered that the application of the moratorium should take into account the intent of the purchaser.	We agree with the commenters who indicated that the moratorium is effective as it provides market participants time to react to changes in significant holdings of issuers’ securities.

Subject	Summarized Comments	CSA Responses
	One commenter noted that the moratorium is an incentive to report so that an accumulation program can resume. However, in their view, the question of whether the 'stop and report' approach yields benefits is much less clear. One commenter submitted that regardless of the threshold determination, rather than imposing a moratorium on an early warning system filer, greater fairness and efficiency in the capital markets can be achieved from requiring disclosure of the information immediately following the close of the market. Two commenters indicated that the moratorium is not effective.	
(3) We currently recognize that accelerated reporting is necessary if securities are acquired during a take-over bid by requiring a news release at the 5% threshold to be filed before the opening of trading on the next business day. **With the Proposed Amendments to the early warning reporting threshold, we do not propose to further accelerate early warning reporting during a take-over bid.** **(a) Do you agree? Please explain why or why not.** **(b) If you disagree, how should we accelerate reporting of transactions during a take-over bid? Should we decrease the threshold for reporting changes from 2% to 1%? Or do you think that requiring early warning reporting at the 3% level is a more appropriate manner to accelerate disclosure? Please explain your views.**		
(a)	Twelve commenters agreed with maintaining a 5% reporting threshold in the context of a take-over bid.	In light the CSA's decision not to reduce the early warning reporting threshold to 5%, we are maintaining the particular provisions for reporting during a take-over bid.

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(4) The Proposed Amendments would apply to all acquirors including EIIs. **(a) Should the proposed early warning threshold of 5% apply to EIIs reporting under the AMR system provided in Part 4 of NI 62 103? Please explain why or why not.** **(b) Please describe any significant burden for these investors or potential benefits for our capital markets if we require EIIs to report at the 5% level. (Reduction of Early Warning Reporting Threshold from 10% to 5%)**		
(a)	Nine commenters considered that the 5% threshold should apply to all acquirors, including EIIs. Three commenters submitted that reducing the threshold for EIIs reporting under AMR is unnecessary as the nature of the investments is passive. Also, reporting such investments will not provide any additional meaningful information to the capital markets. Three commenters were of the view that this requirement may incur an onerous compliance burden on institutional investors. Two commenters considered that reducing the reporting threshold for EIIs who qualify to use the AMR regime is not appropriate. One commenter stated that the 5% threshold will reduce the available capital for junior issuers.	We thank the commenters for their input. As noted above, the CSA have concluded at this time that the reporting threshold should remain at 10% for all issuers and investors.
(b)	Three commenters expressed that imposing such reporting duty on EIIs would not impose an unreasonable burden on them. Two commenters indicated that potential benefits for our capital markets if we require EIIs to report at the 5% level	We thank the commenters for their input. As noted above, the CSA have concluded at this time that the reporting threshold should remain at 10% for all

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	include greater transparency which could lead to more informed investors and hence a more efficient market. One commenter suggested that the co-ordination of internal reporting to include derivatives and securities lending combined with stock ownership to compute overall ownership levels may ultimately prove to be a net benefit. One commenter considered that 5% threshold may discourage EIIs from coming to Canada in the first place. Two commenters indicated that the proposed reduction in the threshold will require significantly increased reporting and involve increased compliance costs. One commenter, while not agreeing with the 5% threshold applying to EIIs, suggested another approach to require EIIs to report at a 5% ownership threshold, but be permitted to maintain anonymity until the 10% threshold is reached.	issuers and investors.
(5) Mutual funds that are reporting issuers are not EIIs as defined in NI 62-103 and are therefore subject to the general early warning requirements in MI 62-104. Are there any significant benefits to our capital markets in requiring mutual funds to comply with early warning requirements at the proposed threshold of 5% or does the burden of reporting at 5% outweigh the potential benefits? Please explain why or why not. (**Reduction of Early Warning Reporting Threshold from 10% to 5%**)		
Yes	Four commenters considered that mutual funds should comply with the 5% threshold. Two commenters noted that it may be more appropriate that mutual funds fall under the AMR regime rather than	We thank the commenters for their input. As noted above, the CSA have concluded at this time that the reporting

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	the general early warning requirements in MI 62-104.	threshold should remain at 10% for all issuers and investors.
No	Five commenters considered that there do not appear to be any significant benefits to our capital markets in obtaining this information. Some of these commenters considered that EIIs that manage the mutual funds are already subject to the early warning disclosure requirements. Two commenters submitted that a passive mutual fund should be permitted to use the AMR system.	We thank the commenters for their input. As noted above, the CSA have concluded at this time that the reporting threshold should remain at 10% for all issuers and investors.
(6) As explained above, we propose to amend the calculation of the threshold for filing early warning reports so that an investor would need to include within the early warning calculation certain equity derivative positions that are substantially equivalent in economic terms to conventional equity holdings. These provisions would only capture derivatives that *substantially replicate* the economic consequences of ownership and would not capture partial-exposure instruments (e.g., options and collars that provide the investor with only limited exposure to the reference securities). Do you agree with this approach? If not, how should we deal with partial-exposure instruments? (Derivatives)		
Yes	Seven commenters agreed with this approach. See also comments under Part A (7) of this Summary.	We thank the commenters for their input. As noted above, the CSA are not proceeding with the proposal to include "equity equivalent derivatives" in the early warning reporting trigger.
No	One commenter disagreed with the exclusion of partial-exposure instruments from the calculation with regard to disclosure requirements because sophisticated investors may be able to use derivatives to accumulate substantial economic positions in public companies without public disclosure.	We thank the commenters for their input. As noted above, the CSA are not proceeding with the proposal to include "equity equivalent derivatives" in the

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	One commenter submitted that the efficacy of the early warning system should rest in the view that the intention of the investor holding the position is what is most relevant to the capital markets. One commenter suggested that derivatives that immediately confer voting rights on an investor should be reported above the threshold. Also, the requisite disclosure should apply to actual ownership of securities, at or above a given threshold, in addition to any derivative holdings, rather than on a net exposure basis. One commenter considered that only derivatives that immediately confer voting rights on an investor should be reported. This commenter also suggested that the CSA consider the discussion papers on the regulation of over-the-counter derivatives. One commenter believed that certain types of derivatives are often used by investors as part of an investment strategy and should not be captured as so doing would unnecessarily complicate the compliance burden and would lead to over-reporting without meaningful benefit to the market. One commenter submitted that the purpose of informing the market about shareholder control does not apply to derivatives. One commenter submitted that further consideration should be given to the practical realities of how "equity	early warning reporting trigger.

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	equivalent derivatives" are structured and how relationships among the parties to such transactions are structured. See also comments under Part A (7) of this Summary.	
(7) We propose changes to NP 62-203 in relation to the definition of "equity equivalent derivative" to explain when we would consider a derivative to substantially replicate the economic consequences of ownership of the reference securities. Do you agree with the approach we propose? (Derivatives)		
Yes	Six commenters agreed with the approach. Two commenters suggested that examples of "equity equivalent derivatives" should be provided for the sake of clarity and ease of compliance. See also comments under Part A (7) of this Summary.	We thank the commenters for their input. The CSA have removed the concept of "equity equivalent derivatives" in the Amendments.
No	One commenter disagreed with the exclusion of partial-exposure instruments from the calculation with regard to disclosure requirements because sophisticated investors may be able to use derivatives to accumulate substantial economic positions in public companies without public disclosure. Three commenters disagreed with the inclusion of certain derivatives in the early warning calculation where the voting rights attaching to the securities are not available to the holder. One commenter submitted that the purpose of informing the market about shareholder control does not apply to derivatives.	We thank the commenters for their input. The CSA have removed the concept of "equity equivalent derivatives" in the Amendments.

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	One commenter considered that the delta 90 test in itself is not adequate to address the complexities of how "equity equivalent derivatives" are structured. See also comments under Part A (7) of this Summary.	
(8) Do you agree with the proposed disqualification from the AMR system for an EII who solicits or intends to solicit proxies from security holders on matters relating to the election of directors of the reporting issuer or to a reorganization or similar corporate action involving the securities of the reporting issuer? Are these the appropriate circumstances to disqualify an EII? Please explain, or if you disagree, please suggest alternative circumstances. (**Changes to Alternative Monthly Reporting Regime)**		
Yes	Nine commenters agreed with the proposed disqualification of EIIs from the AMR. While agreeing with the proposed disqualification from the AMR system for EIIs involved in proxy solicitation, three commenters considered that the term "solicit" should be further specified. One commenter agreed with excluding the ability of an EII to use the AMR regime if they solicit proxies for a reorganization or similar corporate action involving the securities of an issuer. One commenter noted that if the disqualification criterion is retained, it should only apply at the moment when exemptions from the proxy solicitation rules are no longer applicable. See also comments under Part A (9) of this Summary.	We thank the commenters for their input. The CSA are of the view that allowing an EII access to the AMR regime in circumstances where the EII solicits proxies from securityholders in opposition to management on specific matters is not consistent with the policy intent of the AMR regime. The CSA have clarified in the Amendments that the term 'solicit' has the same meaning as defined in NI 51-102 *Continuous Disclosure Obligations*. We consider that EIIs who solicit proxies in certain circumstances should not be eligible to use the AMR regime regardless of whether or not they are relying on an exemption from sending

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		information circulars.
No	One commenter questioned the ability of a regulator to distinguish investor mal-intent and the definition of "intends to solicit proxies" which may manifest itself when engaging with the issuer. One commenter disagreed with excluding the use of the AMR regime if an EII solicits proxies for less than a majority of the board of directors. Also, the commenter asked the CSA to remove the inability to use the AMR regime at such time an investor "intends" to solicit proxies and to clarify the meaning of the term "solicit". See also comments under Part A (9) of this Summary.	We acknowledge these comments. As noted above, we have clarified in the Amendments that the term 'solicit' has the same meaning as defined in NI 51-102 *Continuous Disclosure Obligations*. We have removed the concept of "intends to solicit" to avoid uncertainty as to the application of the disqualification criteria.
(9) We propose to exempt from early warning requirements acquirors that are lenders in securities lending arrangements and that meet certain conditions. Do you agree with this proposal? Please explain why or why not. (Securities lending)		
Yes	Nine commenters agreed that the conditions required to meet the exemption were sensible. One commenter generally agreed with the exemption only in cases where the lending arrangement specifies that the lender has an unrestricted right to recall by the lender from the borrower in a timely manner. One commenter agreed with the reasoning for the need to consider certain conditions occurring under securities lending arrangements when determining the reporting obligation under the early warning system. However, there are many circumstances where the reporting requirement should not be triggered and the proposal	We thank the commenters for their input. We agree with the commenters who supported the scope of the exemption for lenders. We do not believe that a requirement to recall securities on loan in a timely manner is necessary since the right to recall is governed by the securities lending arrangement and typically the lender recalling securities provides the borrower with standard settlement

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	should focus on the intent of the holder of the position.	period notice.
No	One commenter disagreed with this proposal because lenders would appear to be able to accumulate a total position in a security greater than 5% by buying the security and lending it while still retaining the right to recall the securities before a meeting of securityholders.	We acknowledge this comment of opposition.
(10) Do you agree with the proposed definition of "specified securities lending arrangement"? If not, what changes would you suggest? (Securities lending)		
Yes	Nine commenters supported the proposed definition of "specified securities lending arrangement". One commenter would prefer to see the definition address recall by the lender in 'a timely manner'. The commenter considered that if voting is to be effective the timing of the recall should allow the lender to assess and properly consider the implications of any issues that are to be voted on.	We thank the commenters for their input. We agree with the commenters who supported the definition of "specified securities lending arrangement".
No	One commenter suggested that the requirement to report any "material terms" of securities lending arrangements is overly broad, which terms may be commercially sensitive.	The CSA have clarified that the concept of 'material terms' excludes commercially-sensitive information that is irrelevant for early warning disclosure purposes.
(11) We are not proposing at this time an exemption for persons that borrow securities under securities lending arrangements as we believe securities borrowing may give rise to empty voting situations for which disclosure should be prescribed under our early warning disclosure regime. Do you agree with this view? If not, why not? (Securities lending)		
Yes	Seven commenters considered that it was appropriate not to propose an exemption for borrowers as they are concerned with empty voting situations. One commenter noted that not all securities lending	We thank the commenters for their input.

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	arrangements are the same and that each arrangement needs to be considered as to whether voting rights flow to the manager. See also comments under Part A (8) of this Summary.	
No	One commenter noted that borrowing of securities is not customarily done to vote the borrowed securities but rather to effect delivery in connection with short sales. One commenter suggested that borrowing in the context of short selling should be exempted from the reporting obligations. See also comments under Part A (8) of this Summary.	We thank the commenters for their input. The CSA have decided to introduce in the Amendments an additional reporting exemption for borrowers under securities lending arrangements, subject to certain conditions.
(12) Do the proposed changes to the early warning framework adequately address transparency concerns over securities lending transactions? If not, what other amendments should be made to address these concerns? (Securities lending)		
Yes	Two commenters noted that the Proposed Amendments adequately address concerns over securities lending transactions. Their main concern is knowing the identity and the position of securities borrowers who hold voting rights without any corresponding economic interest. Two commenters considered that the proposed changes generally address transparency concerns over securities lending transactions. Concerned by the little visibility of the shares lent, one commenter suggested that the entire process of share lending and its implications for empty voting and hidden voting may need to be the subject of a separate review by securities regulators.	We thank the commenters for their input. We agree with the commenters who supported the proposed changes to address the transparency concerns over securities lending transactions.

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	One commenter suggested that the framework regarding securities lending must respect the unique attributes of each lending arrangement. See also comments under Part A (8) of this Summary.	
No	Two commenters suggested that borrowers should be explicitly required to disclose if the securities they have borrowed may be recalled by the lender. See also comments under Part A (8) of this Summary.	We thank the commenters for their input. The Amendments require disclosure of the material terms of a securities lending arrangement in effect at the time of the early warning reporting, including details of the recall provisions.
(13) Do you agree with our proposal to apply the Proposed Amendments to all reporting issuers including venture issuers? Please explain why or why not. Do you think that only some and not all of the Proposed Amendments should apply to venture issuers? If so, which ones and why? (Reduction of Early Warning Reporting Threshold from 10% to 5%)		
Yes	Four commenters agreed that the Proposed Amendments should be applied to all reporting issuers, including venture issuers. Although these commenters would not be opposed to certain exemptions being applied with regard to small or mid-cap issuers, two commenters viewed that in principle the Proposed Amendments should apply to all reporting issuers.	We thank the commenters for their input. As noted above, the CSA have concluded at this time that the reporting threshold should remain at 10% for all issuers and investors.
No	Four commenters disagreed with applying the proposal to venture issuers. One commenter suggested additional study before making the Proposed Amendments applicable to venture	We thank the commenters for their input. As noted above, the CSA have concluded at this time that the reporting

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	issuers.	threshold should remain at 10% for all issuers and investors.
(14) Some parties to "equity equivalent derivatives" may have acquired such derivatives for reasons other than acquiring the referenced securities at a future date. For example, some parties to these derivatives may wish to maintain solely an economic equivalency to the securities without acquiring the referenced securities for tax purposes or other reasons. Would the proposed requirement lead to over-reporting of total return swaps and other "equity equivalent derivatives"? Or would the possible over-reporting be mitigated by the fact that it is likely that parties to "equity equivalent derivatives" would qualify under the AMR regime? (Derivatives)		
Yes	Three commenters submitted that over-reporting will occur and contribute to confusion in the marketplace. One commenter expressed that if an investor seeks to maintain solely an economic equivalence and does not intend to acquire the referenced securities, then they could be deemed as being passive and report under the AMR. One commenter submitted that where there is no transfer of the rights of the shareholder to the derivative holder, reporting the position would not be relevant or insightful disclosure to the capital markets. One commenter noted that if an investor does not intend to acquire the referenced security then they should not be required to report.	We thank the commenters for their input. The CSA have removed the concept of "equity equivalent derivatives" in the Amendments.
No	One commenter agreed that it seems likely that possible over-reporting would be mitigated by the fact that parties to "equity equivalent derivatives" would qualify under the AMR regime.	We thank the commenters for their input. The CSA have removed the concept of "equity equivalent derivatives" in the

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		Amendments.
(15) If the proposed new requirement does lead to an over-reporting of these derivatives, is this rectified by the requirement in the early warning report for acquirors to explain the purpose of their acquisition and thereby clarify that they do not intend to acquire the referenced securities upon termination of the swap? (Derivatives)		
Yes	One commenter agreed that it seems likely that if there is over-reporting of derivatives, it will be rectified by the requirement in the early warning report for acquirors to explain the purpose of their acquisition.	We thank the commenters for their input. The CSA have removed the concept of "equity equivalent derivatives" in the Amendments.
No	One commenter suggested that clarification of which parties retain voting control versus those that merely have an economic interest would benefit the market. One commenter submitted that the requirement puts too much extraneous information into the system and that, in turn, creates inappropriate investor reaction. One commenter noted that the explanation in the report will not solve the potentially confusing over-reporting.	We thank the commenters for their input. The CSA have removed the concept of "equity equivalent derivatives" in the Amendments.