CFA Societies Canada

Canadian Advocacy Council

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1

+1 (416) 366 3658
www.cfacanada.org

June 23, 2026

VIA EMAIL

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
Superintendent of Securities, Nunavut
c/o

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
E-mail: consultation-en-cours@lautorite.qc.ca

Re: *Proposed Amendment to National Instrument 55-104 Insider Reporting Requirements and Exemptions Relating to Investment Funds and Certain Structured Products* (the "Consultation")

The Canadian Advocacy Council of CFA Societies Canada (the "CAC")[1] appreciates the opportunity to provide the following comments on the Consultation.

We support the policy objective of the proposed amendment (the "Proposed Amendment"). We agree that an insider who acquires or disposes of economic exposure to securities of their own reporting issuer should not fall outside the insider reporting requirements merely because that exposure is obtained or shed through an investment fund or a structured product rather than through the underlying securities directly. The insider reporting regime serves to deter improper trading on material undisclosed information and to give the market timely visibility into the trading activity, and by inference the economic alignment, of those closest to an issuer. An

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC. As the global association of investment professionals, CFA Institute sets the standard for professional excellence and credentials, with over 200,000 charterholders worldwide across 160 markets. Find us at www.cfainstitute.org.

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exemption that allowed that activity to be conducted unseen through a wrapper would be at odds with that purpose.

We also support the functional manner in which the Proposed Amendment is drafted. By turning on whether the value of a security is "derived from, referenced to or based on" a security of the reporting issuer, rather than on an enumerated list of product types, the new section 9.8 is capable of capturing economically equivalent exposure however it is packaged, and of accommodating products that have not yet come to market. We regard that as the correct design choice.

Our comments accordingly concern how the Proposed Amendment can be made sufficiently certain and administrable to achieve its purpose, rather than whether the CSA should proceed. We set out below four observations and a number of (we hope) constructive recommendations.

The objective and the functional approach are sound

We begin by affirming the premise of the Proposed Amendment. The products that prompted it, including the single-issuer exchange traded funds that have recently come to the Canadian market, can give an insider economic exposure to their own reporting issuer that is substantially equivalent to holding the underlying securities. We agree that exposure of this kind should be reportable, and that the exemption in paragraph 9.7(g) was not intended to shelter it. We note as well that the approach is well grounded in existing rule-making authority, which already contemplates the reporting of agreements, arrangements or understandings that alter an insider's economic interest in a security or economic exposure to a reporting issuer.[2] The Proposed Amendment is, in our view, a sensible clarification of an existing policy rather than a departure from it.

The term "material component" should be defined, and defined in Canadian terms

Our principal comment concerns certainty. The operative trigger of proposed section 9.8(b) is whether the value or market price of a security is derived from, referenced to or based on an underlying that "is, or includes as a material component," a security of the reporting issuer. The phrase "material component" is not defined in National Instrument 55-104. It already appears in paragraph 9.7(a)(iii) and underlies the investment fund condition in paragraph 9.7(f), but the Proposed Amendment would give it a more prominent operative role without resolving its meaning.

We query whether the limited guidance that does exist is apt. The Companion Policy, at section 9.5, addresses the paragraph 9.7(f) condition and suggests that, in determining materiality, "similar considerations to those involved in the concepts of material fact and material change would apply." Whether a security forms a material component of a product's value is, however, a quantitative question of proportion, whereas material fact and material change are qualitative

[2] See, for example, the *Securities Act* (Ontario), paragraph 143(1)30.1, which contemplates rule-making in respect of the reporting by insiders of any agreement, arrangement or understanding that alters, directly or indirectly, an insider's economic interest in a security or an insider's economic exposure to a reporting issuer.

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tests directed at whether information would reasonably be expected to affect an investor's decision or the market price of a security. The qualitative standard offers a reporting insider little practical guidance as to where the proportional line falls. We also note that section 9.5 by its terms addresses only paragraph 9.7(f); it would not extend to the new section 9.8, with the result that the operative trigger of the new provision would be introduced with no interpretive guidance at all.

The threshold should also be directed at the right measure, and here a further difficulty arises. A test framed as a percentage of the product's value, as in the European Union and the United Kingdom,[3] measures the composition of the product and not the significance of the insider's interest in the issuer, and it fails in two further respects that are increasingly common in the market. It understates leveraged exposure: a product that provides two times the daily return of a single issuer commits only a portion of its value to that issuer's securities while delivering twice the price sensitivity, so a measure based on the product's value would materially understate the insider's true exposure. It also mischaracterises inverse exposure: a product that provides the inverse of an issuer's return gives the insider economic exposure that profits from a decline in the issuer's securities, which is precisely the kind of position, potentially informed by undisclosed information, that insider reporting exists to surface, yet a test asking only whether the product is "based on" the issuer's securities may pass over it.

The relevant measure is therefore the insider's effective economic exposure to their reporting issuer, adjusted for leverage and calculated as an absolute value so that exposure in either direction is captured. That reading is consistent with the Instrument as it stands. "Economic exposure" is already defined by reference to the extent to which an insider's interests are aligned with the trading price of the issuer's securities, the supplemental reporting requirement in Part 4 already applies to arrangements that alter that exposure directly or indirectly, and the Companion Policy already treats a derivative that reduces or eliminates an insider's exposure, or that reduces the sensitivity of the insider to the issuer's share price, as a change in economic exposure.[4]

The relevance of these points is not hypothetical. Although the Consultation describes the products of concern by reference to single-issuer exchange traded funds and depositary

[3] For comparison, under the European Union and United Kingdom market abuse regime a person discharging managerial responsibilities need not report exposure to the issuer held through a collective investment undertaking unless the issuer's securities exceed 20 per cent of the assets of that undertaking (Market Abuse Regulation (Regulation (EU) No 596/2014), Article 19, as currently retained in United Kingdom law). That test measures the concentration of the product rather than the significance of the insider's interest in the issuer. United States practice points the other way for derivative positions: Rule 16a-1 under the Securities Exchange Act of 1934 excludes broad-based index products from the definition of derivative securities, and Table II of Form 4 calls for the title and amount of the securities underlying a derivative, an approach consistent with the effective-exposure measure we recommend (17 CFR § 240.16a-1(c)(4)).

[4] National Instrument 55-104 defines "economic exposure," in relation to an issuer, as "the extent to which the economic or financial interests of a person or company are aligned with the trading price of securities of the issuer or the economic or financial interests of the issuer" (section 1.1; Ontario has a separate statutory definition). The supplemental insider reporting requirement applies to an agreement, arrangement or understanding that "has the effect of altering, directly or indirectly, the reporting insider's economic exposure to the reporting issuer" (section 4.1(2)(a)). The Companion Policy gives the example of a reporting insider who enters into an equity swap to "reduce or eliminate" the risk of a fall in the value of securities held, and observes that a hedging transaction "reducing the sensitivity" of the insider to the issuer's share price changes the insider's economic exposure.

receipts, the Canadian market has already moved further. Exchange traded funds providing two times the daily return of individual Canadian issuers, including several of the largest, together with an inverse fund on one such issuer, were listed on the Toronto Stock Exchange in October and November 2025, after the product data on which the Consultation appears to rely.[5] Because these are listed securities, leveraged and inverse exposure to an insider's own reporting issuer is now among the most readily accessible forms of indirect exposure, available through an ordinary brokerage account in the same manner as the underlying securities themselves and without the negotiation that the purchase of a structured note may entail. That ease of access, in our view, makes the case for capturing such exposure within the insider reporting requirements more pressing rather than less. Some single-issuer exchange traded funds also employ modest embedded leverage, and bank-issued structured notes may provide upside participation rates above 100 per cent or leveraged downside features, so that their exposure to the reference issuer can depart significantly from the amount invested. A definition of "material component" tied to the proportion of a product's value would be poorly suited to these products and would risk being overtaken by the next variation in product design, whereas a measure based on effective economic exposure would not.

We would accordingly encourage the CSA to define "material component" so that section 9.8 applies where the reporting insider's effective economic exposure to securities of their reporting issuer, obtained through the product and taken together with the insider's other direct and indirect holdings, is itself significant. A look-through of this kind is, in any event, the method native to National Instrument 55-104, which already counts securities over which an insider has "control or direction, whether direct or indirect," and which already requires the existing paragraph 9.7(g) exemption to be assessed by reference to control over the underlying securities rather than the composition of the wrapper. To preserve administrability, we would couple that test with a bright line: the exemption should be unavailable where securities of the reporting issuer, or a related financial instrument involving them, constitute more than 10 per cent of the value of the product, and in any event where the product provides leveraged or inverse exposure to securities of the reporting issuer. Such a bright line would capture single-issuer products, leveraged and inverse products, and heavily weighted baskets, and would allow a single threshold to govern both the paragraph 9.7(f) investment fund condition and the new section 9.8.

We would pair the definition with two qualifications, each of which has a foundation in the existing Instrument. First, the provision should accommodate the reporting insider who does not know, and in the exercise of reasonable diligence could not have known, the composition of a third-party product. National Instrument 55-104 already affords precisely such a defence, at paragraph 9.7(e), in respect of alterations to economic exposure; extending the same standard

[5] These funds were listed by a single Canadian fund manager in October and November 2025 and provide two times the daily return of individual Canadian reporting issuers (among them Royal Bank of Canada, Toronto-Dominion Bank, CIBC, National Bank of Canada, Canadian Natural Resources, Cameco, Constellation Software, Barrick Mining and Shopify), together with an inverse fund on Shopify. They post-date the product counts cited in the Consultation. The leverage characteristics of single-issuer exchange traded funds and structured notes described in this paragraph are drawn from issuer offering materials; the specific figures vary by product and over time.

to section 9.8 would be internally consistent and would prevent the provision from imposing an obligation that an insider holding an opaque third-party product cannot, in good faith, discharge.[6] Second, the provision should expressly exclude exposure obtained through a broad-based index fund, basket or derivative in which the reporting issuer is only a minor constituent and which is neither leveraged nor inverse. Exposure of that kind conveys nothing about the significance of an insider's interest in, or influence over, the issuer, which are the matters with which the reporting insider definition is concerned, and its exclusion is consistent with the approach taken in the United States as noted above.

A related question concerns control of the investment fund itself. The Proposed Amendment directs acquisitions and dispositions of investment fund securities to the exemption in paragraph 9.7(f), which is conditioned only on the issuer not forming a material component of the fund's market value, and says nothing of the insider's relationship to the fund. The exemption in paragraph 9.7(g), by contrast, is available only where the insider is not a control person and does not have or share investment control over the securities of the reporting issuer, and the Companion Policy already treats an insider who is able to influence the investment or voting decisions of an entity holding the issuer's securities as having control or direction over those securities.[7] We query whether an insider who controls or significantly influences an investment fund should be able to rely on the paragraph 9.7(f) exemption in respect of that fund's holdings of their own reporting issuer's securities, even where those securities fall below the materiality threshold, given that such an insider may direct the fund's dealing in, or concentration of, those securities. We would encourage the CSA to consider whether the fund exemption should carry a control condition comparable to that in paragraph 9.7(g), or at the least to clarify how that exemption is intended to interact with the existing obligation to report securities over which an insider has control or direction, whether direct or indirect. Materiality, in this sense, runs in two directions: whether the issuer is material to the fund, and whether the insider is material to the fund.

The enumerated examples may misdirect

The Consultation identifies structured notes, American Depositary Receipts ("ADRs") and Canadian Depositary Receipts ("CDRs") as the structured products at which the Proposed Amendment is aimed. We offer an observation on these examples. ADRs and CDRs are, as a general matter, depositary receipts representing the securities of foreign issuers. A Canadian reporting issuer's insider would rarely, if ever, hold an ADR or a CDR representing securities of their own reporting issuer. The Ontario Securities Commission's cost-benefit analysis records

[6] National Instrument 55-104, paragraph 9.7(e), which exempts a reporting insider who "did not know and, in the exercise of reasonable diligence, could not have known" of the alteration to economic exposure described in section 4.1.

[7] Companion Policy 55-104CP, section 3.3, which provides that a reporting insider may have control or direction over securities where the insider is able to influence the investment or voting decisions of an entity that owns securities of the reporting insider's issuer. The control conditions referred to are those in paragraph 9.7(g) of National Instrument 55-104.

approximately 200 CDRs and 70 single-issuer exchange traded funds listed in Canada.[8] On the present facts, the products most likely to give a Canadian insider economic exposure to their own reporting issuer are single-issuer exchange traded funds, including the leveraged and inverse funds noted above, and issuer-referenced structured notes, rather than depositary receipts.

We raise this point to guard against the examples being read as the intended scope. We do not propose narrowing the provision, the functional drafting of which we support. We would encourage the CSA to clarify, whether in the instrument or in the Companion Policy, that the products named are illustrative only and that the availability of the exemption turns on the economic substance of the product rather than on its label or its place within a particular product category.

The anticipated compliance impact appears understated

The Ontario Securities Commission's analysis concludes that the Proposed Amendment imposes no additional costs on insiders or issuers because it introduces no new reporting requirement, and characterises the benefit as one that is "not reasonably practicable to quantify."[9] We query whether that conclusion fully accounts for the assessment burden the Proposed Amendment creates. Although the Proposed Amendment adds no new form of report, it requires every reporting insider to determine, on a continuing basis, whether a given fund or structured product is one whose value is derived from or based on, as a material component, a security of their reporting issuer, and to reconcile the new section 9.8 with the existing material-component condition in paragraph 9.7(f). Where the operative term is undefined, that determination is neither straightforward nor without cost.

We raise this to reinforce our principal recommendation, rather than to oppose the Proposed Amendment. The clarity we propose above is also what would render the compliance impact of the Proposed Amendment as modest as the analysis anticipates. A defined threshold, a broad-based-index carve-out and a knowledge qualifier would convert an open-ended assessment into a manageable one. We would also encourage the CSA to monitor the use of these exemptions following implementation and to revisit the calibration of any threshold in light of experience, consistent with the data-driven approach to rule-making that we have supported in prior comments.

We would also encourage the CSA to provide a reasonable transition period between the finalisation of the Proposed Amendment and the date on which it comes into force. A defined period, in place of the date presently left open in the draft instrument, would give reporting insiders a fair opportunity to assess their existing holdings against the clarified requirement and to file any reports that the Proposed Amendment newly requires.

[8] Ontario Securities Commission, Annex B (Local Matters) to the Consultation, Cost-Benefit Analysis (recording, as at February 2025, approximately 200 CDRs and 70 single-issuer exchange traded funds listed in Canada, with rapid growth in these product segments during 2025).

[9] Ontario Securities Commission, Annex B (Local Matters) to the Consultation, Anticipated Costs and Benefits.

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Concluding Remarks

We support the Proposed Amendment and the objective behind it, and we offer the foregoing comments to assist the CSA in ensuring that the new provision is sufficiently certain to be applied consistently by reporting insiders. Our central recommendation is that the CSA define "material component", and include consideration of effective exposure that is leveraged or inverse, and that it accompany the new provision with a broad-based-index carve-out and a knowledge qualifier of the kind the Instrument already contains.

We observe, finally, that the Proposed Amendment addresses one discrete consequence of a broader development: the continued growth of structured and wrapped products that give investors economic exposure to issuers outside the traditional investment fund framework. The CSA itself acknowledged, in Staff Notice 44-305, that structured notes are regulated largely by analogy to investment funds and that gaps may exist that could warrant more formal regulatory attention.[10] We do not suggest that these broader questions be resolved within this narrow amendment or consultation. We would, however, welcome the opportunity to contribute to the CSA's thinking as and when it returns to them, and would encourage this to happen expeditiously.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) The Canadian Advocacy Council of
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[10] CSA Staff Notice 44-305 *Structured Notes Distributed Under the Shelf Prospectus System* (January 22, 2015), in which CSA staff observed that they look to investment fund regulatory requirements as a guide, that potential gaps exist in the continuous disclosure applicable to structured note issuers, and that more formal regulatory requirements may become necessary to regulate like products consistently.